

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

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TRANSCRIPT OF RECORD

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA

APRIL TERM, 1939

No. 7450

DISTRICT OF COLUMBIA, PETITIONER,

vs.

SAFE DEPOSIT & TRUST CO. OF BALTIMORE,
EXECUTORS OF THE ESTATE OF H. (HARRY)
SHELTON, DECEASED

PETITION TO REVIEW DECISION OF THE BOARD OF TAX
APPEALS FOR THE DISTRICT OF COLUMBIA

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UNITED STATES COURT OF APPEALS

WASHINGTON, D. C.

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IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA

APRIL TERM, 1939

No. 7450

DISTRICT OF COLUMBIA, PETITIONER,

vs.

SAFE DEPOSIT & TRUST CO. OF BALTIMORE,
EXECUTORS OF THE ESTATE OF H. (HARRY)
SHELTON, DECEASED, RESPONDENT

PETITION TO REVIEW DECISION OF THE BOARD OF TAX
APPEALS FOR THE DISTRICT OF COLUMBIA

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1 BOARD OF TAX APPEALS FOR THE DISTRICT
OF COLUMBIA

SAFE DEPOSIT & TRUST COMPANY OF BALTIMORE, Executors of
the Estate of H. (HARRY) SHELTON, Dec., Petitioner,

vs.

DISTRICT OF COLUMBIA, Respondent.

Counsel: DAVID R. SHELTON,
Address: Munsey Building, Washington, D. C.

Docket No. 168

DOCKET

Date	Proceedings	Memorandum
2-24-39	Petition filed—taxpayer notified	A. A. Notf. Es- tate Tax
Mar. 17	Issue joined, calendared, hearing set for	4-3-39
Apr. 3	Hearing	
Apr. 24	Findings of Fact, Opinion and Decision	
May 22	Pet. for Review and Notice filed by respondent	
June 21	Statement of Evidence	

2 BOARD OF TAX APPEALS OF THE DISTRICT OF
OF COLUMBIA

SAFE DEPOSIT & TRUST COMPANY OF BALTIMORE, Executor of
the Estate of H. (HARRY) H. SHELTON, Deceased, Petitioner,

v.

DISTRICT OF COLUMBIA, Respondent.

DOCKET NO. 168

PETITION

The above-named petitioner petitions for a cancellation and reduction of an assessment of taxes against it and alleges as follows:

1. Petitioner, a fiduciary, is the duly qualified and acting Executor of the Estate of H. (Harry) H. Shelton, deceased, and is a corporation organized and existing under and by virtue of the laws of the State of Maryland with its principal office and place of business at 13 South Street, Baltimore, Maryland.

2. The tax in controversy is Estate tax for the year 1937 and the amount in controversy is \$2,211.22, plus interest in the amount of \$44.22, making a total of \$2,255.44.

3. The notice of assessment (statement of alleged Estate tax due) was dated December 1, 1938, and the tax, plus interest, was paid by the petitioner under protest in writing on or about February 17, 1939, as shown by the copy of the notice of assessment attached hereto, made a part hereof, and marked Exhibit A.

4. The assessment of the tax set forth on the aforementioned notice of assessment is based upon the following errors:

3 (a) the respondent erred in assessing an Estate tax in excess of the amount whereby the Inheritance tax properly payable to the District of Columbia did not amount to the full 80% credit allowed under the Federal Estate Tax Law on account of "any estate, inheritance, legacy or succession tax actually paid to any State or Territory or the District of Columbia, in respect of any property included in the gross estate."

(b) The respondent erred in failing to assess an Estate tax only to the extent of the amount whereby the Inheritance tax properly payable to the District of Columbia did not amount to the full 80% credit allowed under the Federal Estate Tax Law on account of "any estate, inheritance, legacy or succession tax actually paid to any State

or Territory or the District of Columbia, in respect of any property included in the gross estate."

(c) The respondent erred in assessing an Estate tax in excess of the amount of such tax imposed by the District of Columbia Revenue Act of 1937.

(d) The respondent erred in failing to assess an Estate tax not in excess of the amount of such tax imposed by the District of Columbia Revenue Act of 1937.

(e) The respondent erred in assessing an Estate tax in an amount greater than \$414.01.

(f) The respondent erred in failing to assess an Estate tax not in excess of \$414.01.

(g) The respondent erred in assessing and/or collecting interest in the amount of \$52.50 on the alleged Estate tax rather than interest in the amount of \$8.28.

5. The facts upon which the petitioner relies as the basis for this proceeding are as follows:

4 (a) That pursuant to the provisions of section 301(c) of Title III of the Federal Revenue Act of 1926, as amended, the full amount of the 80% credit allowable to the petitioner against the Federal Estate tax on account of Inheritance and Estate taxes paid to the District of Columbia is \$2,625.23.

(b) That on or about November 22, 1938, respondent duly assessed Inheritance tax in the amount of \$1,168.97 against the petitioner on account of Eloise Sevier Shelton's share of the Estate of H. (Harry) H. Shelton, deceased, which said Inheritance tax was duly paid to respondent on or about February 17, 1939, as shown by Exhibit B attached hereto and made a part hereof.

(c) That on or about February 15, 1939, respondent duly assessed Inheritance tax in the amount of \$1,042.25 against the petitioner on account of Judith Shelton Weston's share of the Estate of H. (Harry) H. Shelton, deceased, which said Inheritance tax was duly paid to respondent on or about February 17, 1939, as shown by Exhibit C attached hereto and made a part hereof.

(d) That the total of the aforementioned Inheritance

taxes properly assessed and duly paid to the respondent is \$2,211.22 and that the difference between said total and the full amount of the 80% credit allowed by section 301(c) of Title III of the Revenue Act of 1926, as amended, namely, \$2,625.23, is \$414.01.

- 5 (e) That the aforesaid Inheritance taxes in the amount of \$2,211.22, which have been duly and properly paid to the respondent as hereinbefore alleged, are allowable as a part of the 80% credit against the Federal Estate Tax in accordance with and pursuant to the express provisions of section 301(c) of Title III of the Federal Revenue Act of 1926, as amended, and that said \$2,211.22 lacks \$414.01 of being the full amount of said 80% credit.

(f) That notwithstanding the express provisions of the District of Columbia Revenue Act of 1937 to the effect that the purpose of the District of Columbia Estate Tax Law is to secure for the respondent the benefit of the said 80% credit "to the extent that the District of Columbia may be entitled by the provisions of said" Federal Revenue Act, the respondent has erroneously assessed an alleged Estate tax against the petitioner in the amount of \$2,625.23, plus interest in the amount of \$52.50.

(g) That the aforesaid alleged Estate tax in the amount of \$2,625.23 was assessed on or about December 1, 1938, and, together with interest in the amount of \$52.50, was paid under protest in writing by the petitioner on or about February 17, 1939, as shown by the aforesaid Exhibit A attached hereto and made a part hereof.

(h) That said Inheritance taxes in the amount of \$2,211.22 and said Estate tax in the amount of \$2,625.23 makes a total of \$4,836.45, which total exceeds the full 80% credit allowable under section 301(c) of Title III of the Revenue Act of 1926, as amended by \$2,211.22.

(i) That \$414.01, together with interest in the amount of \$8.28 attributable thereto, of said \$2,625.23 was properly and legally collected from and paid by the petitioner in accordance with and pursuant to the Estate Tax Law

contained in the District of Columbia Revenue Act of 1937.

- 6 (j) That \$2,211.22, together with interest in the amount of \$44.22 attributable thereto, of said \$2,625.23 was improperly and illegally exacted from the petitioner by the respondent contrary to the provisions of the Estate Tax Law contained in the District of Columbia Revenue Act of 1937.

WHEREFORE, the petitioner prays that this Board may hear this proceeding and find, determine, hold, and decide

(a) that the District of Columbia Revenue Act of 1937 imposes an Estate tax on the estate of a resident decedent only to the extent that the 80% credit allowed by section 301(c) of Title III of the Federal Revenue Act of 1926, as amended, exceeds the amount of Inheritance taxes properly payable by said estate to the District of Columbia;

(b) that the correct Estate tax liability of the petitioner is in the amount of \$414.01, plus interest in the amount of \$8.28;

(c) that petitioner has overpaid Estate tax to respondent in the amount of \$2,211.22, plus interest in the amount of \$44.22; and

(d) that the aforesaid overpayment shall be refunded by the respondent to the petitioner together with interest thereon.

DAVID R. SHELTON,
Munsey Building,
Washington, D. C.
Counsel for Petitioner.

7 STATE OF MARYLAND,
CITY OF BALTIMORE, ss:

W. R. HUBNER, being duly sworn, says that he is Vice President of Safe Deposit & Trust Company of Baltimore, petitioner above named; that he is duly authorized to verify the foregoing petition; that he has read the foregoing petition, or had the same read to him, and is familiar with the statements contained therein, and that the statements contained therein are

true, except those stated to be upon information and belief,
and that those he believes to be true.

W. R. HUBNER

Subscribed and sworn to before me this 23rd day of February, 1939.

W. LESLIE ESKRIDGE

Notary Public

EXHIBIT A
OFFICE OF THE ASSESSOR, DISTRICT OF COLUMBIA
ESTATE TAX

Washington, D. C., December 1, 1938
Estate of H. H. SHELTON Estate No. 614
Estate Tax \$ 2,625.23
Penalty \$
Interest \$ 2.50
Total \$ 2,677.73
Safe Deposit and Trust Company, Executor
13 South Street
Baltimore, Maryland
This bill payable on or before January 1, 1939
DJDjr INTEREST TO MARCH 1, 1939
To THE DISTRICT OF COLUMBIA, Dr. PAY TO THE COLLECTOR OF TAXES, D. C.
PAID UNDER PROTEST

CR: 9704 Estate Tax

DUPLICATE

EXHIBIT B
OFFICE OF THE ASSESSOR, DISTRICT OF COLUMBIA
INHERITANCE TAX

Washington, D. C., November 22, 1938
Estate of H. H. SHELTON Estate No. 614
Tax upon share of Kloise Savier Shelton Inheritance Tax \$ 1,168.97
Penalty \$
Interest \$
Total \$ 1,168.97
Safe Deposit and Trust Co. of Balto., Executor
13 South Street
Baltimore, Maryland
This bill payable on or before April 26, 1939
DJDjr
To THE DISTRICT OF COLUMBIA, Dr. PAY TO THE COLLECTOR OF TAXES, D. C.
PAID UNDER PROTEST

CR: 9703 Inheritance Tax

EXHIBIT C
OFFICE OF THE ASSESSOR, DISTRICT OF COLUMBIA
INHERITANCE TAX

Washington, D. C., February 15, 1939
Estate of H. H. SHELTON Estate No. 614
Tax upon share of Judith Shelton Neaton Inheritance Tax \$ 1,042.25
Penalty \$
Interest \$
Total \$ 1,042.25
Safe Deposit and Trust Co. of Balto., Executor
13 South Street
Baltimore, Maryland
This bill payable on or before April 26, 1939
DJDjr AMENDED BILL
To THE DISTRICT OF COLUMBIA, Dr. PAY TO THE COLLECTOR OF TAXES, D. C.
PAID UNDER PROTEST

CR: 9703 Inheritance Tax

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PAID—*Len Brown* Collector of Taxes, D. C. PAID—*Len Brown* Collector of Taxes, D. C.

9

OPINION NO. 117

BOARD OF TAX APPEALS FOR THE DISTRICT OF
COLUMBIA

SAFE DEPOSIT & TRUST COMPANY OF BALTIMORE, Executor of
the Estate of H. (HARRY) H. SHELTON, Deceased, Petitioner,

vs.

DISTRICT OF COLUMBIA, Respondent.

DOCKET NO. 168

FINDINGS OF FACT AND OPINION

The Assessor of the District of Columbia assessed the petitioner, and the petitioner paid the District the sum of \$2,677.73, as an estate tax of \$2,625.23, and interest in the sum of \$52.50, under Article II of Title V of the District of Columbia Revenue Act of 1937. The petitioner seeks refund of \$2,211.22 of the tax and \$44.22 of the interest. It is alleged by the petitioner that the tax and interest, in respect of which refund is claimed were assessed in error, in that, the Assessor assessed the decedent's estate inheritance tax in the sum of \$2,211.22 and, in addition, an estate tax in the sum of \$2,625.23, representing 80 per centum of the estate tax paid by the decedent's estate to the Federal government. The petitioner claims, however, that the estate tax due the District is the difference between the amount paid as inheritance taxes and the 80 per centum of the Federal estate tax, or the sum of \$414.01 only.

FINDINGS OF FACT

The petitioner is a Maryland corporation, duly appointed and acting as the executor of the estate of H. Harry Shelton, deceased, who at the time of his death was domiciled within the District of Columbia. The decedent died after the effective date of the District of Columbia Revenue Act of 1937.

10

On November 22, 1938, the Assessor assessed an inheritance tax of \$1,168.97 against the petitioner on ac-

count of the share of Eloise Sevier Shelton in the decedent's estate; and assessed a similar tax of \$1,042.25 on account of the share of Judith Shelton Weston in such estate. Both of such taxes, totalling \$2,211.22, were paid by the petitioner to the District on February 17, 1939.

Under the provisions of section 301(c) of Title III of the Federal Revenue Act of 1926, as amended, the full amount of 80 per centum credit allowable to the petitioner against the Federal estate tax on account of the inheritance and estate taxes paid the District or any state or territory was \$2,625.23. The petitioner paid no inheritance or estate taxes to any state or territory.

On December 1, 1938, the Assessor assessed against the petitioner an estate tax in the sum of \$2,625.23, being the full 80 per centum of the credit allowed by the provisions of section 301(c) of the Federal Revenue Act of 1926, as amended, without any reduction or credit for the inheritance taxes in the sum of \$2,211.22 theretofore assessed against the petitioner and the beneficiaries of the estate of the decedent.

On February 17, 1939, after the payment of the inheritance taxes, as above stated, the petitioner paid the additional estate tax in the sum of \$2,625.23, plus an interest penalty of \$52.50 to the District, under protest in writing. Such protest claimed that the petitioner was due the District on account of the estate tax, the sum of \$414.01 only, such sum being the difference between the 80 per centum credit allowable under the Federal estate tax law and the amounts actually paid as inheritance taxes.

This proceeding was filed on February 24, 1939.

OPINION

The question presented for decision in this proceeding is whether the estate tax imposed by Article II of Title V of the District of Columbia Revenue Act of 1937, should be the full amount equal to 80 per centum of the credit against
11 the Federal estate tax allowed under section 301(c) of Title III of the Federal Revenue Act of 1926, as amended, or whether it should be in a sum equal to the differ-

ence between such 80 per centum credit and the amount of inheritance taxes assessed against and paid by the petitioner and the beneficiaries of the estate of the decedent to the District.

Because of the wording of several sections of Article II of Title V of the District of Columbia Revenue Act of 1937, hereinafter referred to as "Article II," the solution of the question presented is not free from difficulty. Section 18 of Article II provides:

"Sec. 18. In addition to the taxes imposed by article I, there is hereby imposed upon the transfer of the estate of every decedent who, after this title becomes effective, shall die a resident of the District of Columbia, a tax equal to 80 per centum of the Federal estate tax imposed by subdivision (a) of section 301, Title III, of the Revenue Act of 1926, as amended, as hereafter amended or reenacted."

Standing alone Section 18 must be construed as imposing an estate tax equal to 80 per centum of the Federal estate tax imposed by the Federal Revenue Act of 1926, as amended in addition to the inheritance tax imposed by Article I of Title V of the District of Columbia Revenue Act of 1937. Such an interpretation is reinforced by the following language of section 19:

"Sec. 19. There shall be credited against and applied in reduction of the tax imposed by section 19 of this title the amount of any estate, inheritance, legacy, or succession tax lawfully imposed by any State or Territory of the United States, in respect of any property included in the gross estate for Federal estate-tax purposes as prescribed in Title III of the Revenue Act of 1926, as amended, or as hereafter amended or reenacted: *Provided however*, That only such taxes as are actually paid and credit therefor claimed and allowed against the Federal estate tax may be applied as a credit against and in reduction of the tax imposed by section 18."

It will be observed that inheritance taxes imposed by any state or territory *only* may be "credited and applied in reduction of the tax imposed by section 18 of this title." The omis-

sion of inheritance tax paid to the District of Columbia from the class of taxes that may be credited is significant when it is to be remembered that Congress in enacting Article 12 II had before it Section 301(c) of Title III of the Revenue Act of 1926, which allowed as a credit, up to 80 per centum of the Federal estate tax, "any estate, inheritance, legacy, or succession tax lawfully imposed by any State or Territory or the District of Columbia, in respect of any property included in the gross estate."

It is important to note, moreover, that section 20 of Article II provides that the District of Columbia estate tax imposed by section 18 should in no event exceed the difference between the 80 per centum credit and the taxes described in section 19 of Article II ("any estate, inheritance, legacy or succession tax lawfully imposed by any State or Territory of the United States") which do not, as observed above, include inheritance taxes imposed by Article I of Title V (D. C. Inheritance Tax). This creates an inference that the tax imposed by section 18 could exceed the difference between the 80 per centum credit and inheritance taxes imposed by Article I, as is the case in this proceeding.

If Article II contained no other sections relating to the 80 per centum credit allowable under the Federal Revenue Act of 1926 than Section 18, 19 and 20 the Board would be constrained to hold that the petitioner in this proceeding would not be entitled to a credit against the estate taxes imposed by Section 18 of Article II the inheritance taxes assessed under Article I and paid by the petitioner or the beneficiaries of the decedent's estate. The question is, however, complicated by the inclusion of Section 21 in Article II. That Section reads as follows:

"SEC. 21. The purpose of section 18 of this title is to secure for the District of Columbia the benefit of the credit allowed under the provisions of section 301(c) of Title III of the Revenue Act of 1926, as amended, or as hereafter amended or reenacted, to the extent that the District of Columbia may be entitled by the provisions of said Revenue Act, by imposing additional taxes, and

the same shall be liberally construed to effect such purpose: *Provided*, That the amount of the tax imposed by section 18 of this title shall not be decreased by any failure to secure the allowance of credit against the Federal estate tax."

The identical language in section 21 is found in statutes of ten states and territories imposing an estate tax to take advantage of the 80 per centum credit allowed under the Federal Revenue Act of 1926. Substantially the same language is found in statutes of two other states. In every such instance the state or territorial statutes in other and preceding sections provide specifically that the estate tax imposed shall be the difference only between the 80 per centum credit allowable under the Federal estate tax law and the inheritance, legacy or succession tax imposed by the state or territory. All of such statutes were in existence at the time of the enactment of the District of Columbia Revenue Act of 1937, and it must be assumed that Congress had before it the statutes of the states from which section 21 was copied *verbatim*. It must be further presumed that Congress was aware of the meaning of the language in such statutes which was identical with the language of Section 21, when the language was read in connection with the preceding parts of such statutes to the effect that the estate tax imposed should be the difference only between the inheritance tax imposed and the 80 per centum credit allowed by the Federal estate tax law. Moreover, the Board believes that there is force in the argument of the petitioner that the words "to the extent that the District may be entitled to the provisions of said Revenue Act" means that "additional taxes" may be imposed to the extent *only* that the District may be entitled. Such argument is, however, by no means conclusive.

On the other hand, it is argued that, if Congress intended that the estate tax imposed by Section 18 of Article II should be the difference only between the 80 per centum credit and the inheritance tax imposed by Article I, it would have been a simple thing to so state in Article II. Such argument takes on added force when it must be assumed Congress had before it

the statutes of the states and territories, from which Section 21 was copied, which in clear and unmistakable language provided specifically that the estate tax should be the difference only between the 80 per centum credit and the inheritance tax imposed. It is significant that Congress in enacting Article II did not follow the specific language of the statutes of such states and territories.

It is argued by the petitioner that the interpretation for which it contends should be adopted by the Board because in every state which imposed both an inheritance tax and an estate tax the imposing statute provides that the estate tax should be an amount equal to the difference between the 80 per centum credit allowable by the Federal estate tax
 14 law and the inheritance tax imposed by that state, and that a strong presumption is that it was not intended that the District of Columbia law would be different. The Board is of the opinion that the fact of the departure in the instant case from the usual and common practice of the state and territories while not conclusive is persuasive, and militates against the claim of validity of the tax here under consideration, *United States v. Goelet*, 232 U.S. 293, 58 L. ED. 610.

The legislative history of Articles I and II of Title V affords little help in the solution of the problem before the Board, and tends only to render more uncertain what was the intention of Congress in enacting the law. Like many pieces of legislation affecting the District, Title V was prepared under the direction of the Commissioners of the District and submitted for passage. Several hearings before the House District Committee were held, and at one of them the representatives of the District stated that the Commissioners desired a statute imposing inheritance and estate taxes similar to the statutes of Maryland and Virginia. It should here be observed that both the Maryland and Virginia statutes provide in effect that the estate tax imposed shall be the difference only between the 80 per centum credit and the inheritance tax imposed. However, when the bill reached the Senate District Committee the following discussion occurred between Mr. Carruthers, representing the Federation of Citizen's Associa-

tions, Mr. Seal, Corporation Counsel for the District, and Senator King, Chairman of the Senate District Committee:

"Mr. Carruthers. * * * * The next is, Title V. Inheritance and Estate Taxes. We have broken that into two articles, one and two. The federation opposes the inheritance tax in toto, but favor the imposition of an estate tax that would give the District the benefit of the 80 per cent credit, according to the Revenue Act of 1926, *believing that that is the practice now in vogue in all of the States except Nevada.*

"A number of States have imposed this tax just in order to get the 80 per cent credit, and that is the stand of the federation.

"The Chairman. What is the attitude of the Commissioners on that?

15 "Mr. Seal. The Commissioners recommended a very low inheritance tax which would bring in \$200,000. The estate tax recommended would bring in \$600,000. Of course, it is understood that *the inheritance tax is in addition to the estates tax.*

"Mr. Carruthers. Comparatively few of the States have both, but most of them have only one. Sometimes it is called an inheritance or an estate tax. As I understand it *they get the credit of 80 per cent whether it is called inheritance or estate.* The truth of the matter is, as you know, the estate pays before it is distributed and the other fellow pays it when he gets it from the beneficiary. (Underscoring supplied) (P. 49)"

The Board is of the opinion that the meaning of Section 18 of Article II, when read in the light of Sections 19, 20 and 21, is doubtful. It is not clear whether Congress intended that the tax imposed by Section 18 should be the entire amount of the 80 per centum credit allowable under the Revenue Act of 1926, or merely the difference between that credit and the inheritance tax imposed by Article I. There being such a doubt, it must be resolved in favor of the taxpayer. *Reinecke v. Northern Trust Co.*, 278 U.S. 339, 349; *Gould v. Gould*, 245 U.S. 151, 153; *United States v. Merriam*, 263 U.S. 179, 187; *N. Cohn & Sons Co. v. Commissioner*, 9 B.T.A. 87, 92, 93; *Highway Eng. & Constr. Co. v. District of Columbia*, D. C. B.T.A., Docket No. 125. It must, therefore, be held that Sec-

tion 18 of Article II imposes an estate tax merely in the sum of the difference between the 80 per centum credit and the inheritance tax imposed by Article I; and that the estate tax in excess of \$414.01, and the interest penalty on such excess, were erroneously assessed against and paid by the petitioner, and must be refunded to it.

The Board is not unmindful of Section 24(b) of Regulations pertaining to Inheritance and Estate Taxes promulgated by the Commissioners November 8, 1938, which provides as follows:

“(b) The taxes provided by Paragraph (a) of this section shall in no wise be taken as a credit upon or to reduce the taxes provided in Article I of said Title; and the taxes provided in Article I of said Title shall in no wise be taken as a credit upon or to reduce the taxes provided in Paragraph (a) of this section; * * *”

In the opinion of the Board the regulation is invalid and should conform to the ruling made in this opinion.

Decision will be entered for the petitioner.

April 24, 1939

JO. V. MORGAN,
Member Sole

16 BOARD OF TAX APPEALS FOR THE DISTRICT OF COLUMBIA

SAFE DEPOSIT & TRUST COMPANY OF BALTIMORE, Executor of
the Estate of H. (HARRY) H. SHELTON, Deceased, Petitioner.

v.

DISTRICT OF COLUMBIA, Respondent.

DOCKET NO. 168

DECISION

This proceeding came on to be heard upon the petition filed herein, and upon consideration thereof and of the evidence adduced at the hearing on said petition, it is by the Board, this 24th day of April, 1939.

ADJUDGED AND DETERMINED that an estate tax in the sum of \$2,211.22, and an interest penalty in the sum of \$44.22, or a total tax and penalty of \$2,255.44, were erroneously collected from the petitioner, and must be refunded to it.

JO. V. MORGAN,
Member Sole

17 BOARD OF TAX APPEALS FOR THE
DISTRICT OF COLUMBIA

DISTRICT OF COLUMBIA, Petitioner,

VS.

SAFE DEPOSIT & TRUST COMPANY OF BALTIMORE, Executor of
the Estate of H. (HARRY) H. SHELTON, Deceased, Respondent.

DOCKET NO. 168

NOTICE OF FILING PETITION FOR REVIEW

To: David R. Shelton, Esq.,
Munsey Building,
Washington, D. C.
Counsel for the Respondent.

Please take notice that the petitioner on May 22, 1939, filed with the Clerk of the Board of Tax Appeals for the District of Columbia, a petition for review by the United States Court of Appeals for the District of Columbia of the decision of the Board heretofore rendered in the above cause. A copy of the petition for review, which includes the assignments of error and the designation of record, as filed, is hereto attached and served upon you.

Dated this 22 day of May, 1939.

ELWOOD H. SEAL,
Corporation Counsel, D. C.,
District Building
Washington, D. C.
Counsel for the Petitioner.

Service of the foregoing notice, together with a copy of the petition for review is hereby acknowledged this 22nd day of May, 1939.

DAVID R. SHELTON,
Munsey Building,
Washington, D. C.
Counsel for the Respondent.

18 BOARD OF TAX APPEALS FOR THE
DISTRICT OF COLUMBIA

DISTRICT OF COLUMBIA, Petitioner,

vs.

SAFE DEPOSIT & TRUST COMPANY OF BALTIMORE, Executor of
the Estate of H. (HARRY) H. SHELTON, Deceased, Respondent.

DOCKET NO. 168

PETITION FOR REVIEW BY THE UNITED STATES
COURT OF APPEALS FOR THE DISTRICT OF
COLUMBIA OF A DECISION OF THE BOARD OF
TAX APPEALS FOR THE DISTRICT OF COLUMBIA

The District of Columbia, the petitioner in this cause, by Elwood H. Seal, Corporation Counsel, hereby files its petition for review by the United States Court of Appeals for the District of Columbia of the decision of the Board of Tax Appeals for the District of Columbia rendered April 24, 1939, determining that an Estate Tax in the sum of \$2,211.22, and interest thereon in the sum of \$44.22, were erroneously collected from the respondent and should be refunded to it.

I

The petitioner, hereinafter referred to as the District, is a municipal corporation. Respondent, hereinafter referred to as the executor, is a fiduciary, the duly qualified and acting executor of the estate of H. (Harry) H. Shelton, deceased, and is a corporation organized and existing under and by virtue of the laws of the State of Maryland.

II

NATURE OF THE CONTROVERSY

(a) The controversy involves the question of the validity of the assessment and collection by the assessing and collecting authorities of the District of an Estate Tax upon the transfer of the estate of H. (Harry) H. Shelton, deceased.

(b) Title V of the District of Columbia Revenue Act of 1937 became effective at 12:01, A.M., August 18, 1937. Article I of Title V imposes an Inheritance Tax upon all real property and tangible and intangible personal property, or any interest therein, having its taxable situs in the District of Columbia, transferred from any person who may die seized or possessed thereof, after the effective date of the Title. In addition to the Inheritance Taxes imposed by Article I of Title V, there is imposed by Article II of said Title an Estate Tax upon the transfer of the estate of every decedent who, after the Title became effective, shall die a resident of the District of Columbia.

(c) H. (Harry) H. Shelton died after the effective date of Title V and, pursuant to the provisions of Article I thereof, the executor, on November 15, 1938, duly and properly filed an Inheritance Tax return with the Assessor, D. C. On November 22, 1938, the District duly assessed against the executor an Inheritance Tax in the amount of \$1,168.97 on account of the share of decedent's estate transferred to Eloise Sevier Shelton, which said Inheritance Tax was paid to the Collector of Taxes, D. C., on February 17, 1939. On February 15, 1939, the District duly assessed against the executor an Inheritance Tax in the amount of \$1,042.25 on account of the share of decedent's estate transferred to Judith Shelton Weston, which said Inheritance Tax was paid to the Collector of Taxes, D. C., on February 17, 1939. The total amount of Inheritance Taxes assessed to and paid by the executor on account of transfers to beneficiaries under the will of H. (Harry) H. Shelton, deceased, was \$2,211.22.

(d) Pursuant to the provisions of Article II of Title

20 V, the executor, on December 1, 1938, duly and properly filed an Estate Tax return with the Assessor, D. C. On December 1, 1938, the District assessed against the executor an Estate Tax equal to eighty per centum of the Federal Estate Tax imposed by sub-division (a) of Section 301, Title III of the Revenue Act of 1926, in the amount of \$2,625.23, which said Estate Tax, together with interest thereon in the amount of \$52.50, was paid to the Collector of Taxes, D. C., on February 17, 1939.

(e) On February 24, 1939, the executor filed a petition with the Board of Tax Appeals for the District of Columbia, alleging that the District erred in assessing an Estate Tax against the executor in an amount greater than the difference between the Inheritance Taxes paid by said executor and eighty per centum of the Federal Estate Tax imposed by the Revenue Act of 1926 upon the transfer of decedent's estate. On April 24, 1939, the Board determined that an Estate Tax in the sum of \$2,211.22, and interest thereon in the amount of \$44.22, had been erroneously collected from the executor.

III

The District being aggrieved by the findings of fact and conclusion of law contained in said findings and opinion of the Board of Tax Appeals, and by its decision entered in pursuance thereto desires to obtain a review thereof by the United States Court of Appeals for the District of Columbia.

IV

ASSIGNMENTS OF ERROR

The District assigns as error the following acts and omissions of the Board of Tax Appeals:

(1) The holding that an Estate Tax in the sum of \$2,211.22, and interest thereon in the sum of \$44.22, were erroneously collected from the executor.

21 (2) The holding that Inheritance Taxes imposed by Article I of Title V of the District of Columbia Revenue Act of 1937 upon the transfer of property to the beneficiaries

under decedent's will should be allowed as a credit against the Estate Tax imposed by Article II of Title V of said Act.

(3) The holding that Section 18 of Article II of Title V imposes an Estate Tax merely in the sum of the difference between the eighty per centum credit allowed under the provision of Section 301(c) of Title III of the Revenue Act of 1926 and the Inheritance Taxes imposed by Article I of Title V.

(4) The holding that Section 24 (b) of Regulations pertaining to Inheritance and Estate Taxes, promulgated by the Commissioners, D. C., November 8, 1938, is invalid.

(5) The failure to hold that the sum representing Estate Taxes, and interest thereon, was properly collected from the executor and that the executor is entitled to no refund thereof.

(6) The failure to hold that Section 18 of Article II of Title V imposes a tax equal to eighty per centum of the Federal Estate Tax imposed by subdivision (a) of Section 301, Title III, of the Revenue Act of 1926 in addition to the Inheritance Taxes imposed by Article I.

(7) The failure to hold that Section 24 (b) of Regulations pertaining to Inheritance and Estate Taxes, promulgated by the Commissioners, D. C., November 8, 1938, is reasonable and valid.

V

DESIGNATION OF RECORD

The Clerk of the Board of Tax Appeals is requested to prepare, certify and transmit to the Clerk of the United
22 States Court of Appeals for the District of Columbia, with reference to this petition a transcript of the record in the above-entitled cause, prepared and transmitted as required by law and by the rules of said Court, and to include in said transcript of record the following documents or certified copies thereof, to-wit:

(1) The docket entries of all proceedings before the Board of Tax Appeals.

(2) Pleadings before the Board.

(3) Findings of fact and opinion of the Board of Tax Appeals.

(4) The decision of the Board of Tax Appeals.

(5) The Petition for Review, filed by the petitioner in the above case.

(6) Notice of filing Petition for Review.

(7) Statement of Evidence.

ELWOOD H. SEAL,
Corporation Counsel, D. C.
VERNON E. WEST,
Principal Assistant Corporation Counsel
GLENN SIMMON,
Assistant Corporation Counsel,
Counsel for Petitioner.

DISTRICT OF COLUMBIA, ss:

Elwood H. Seal, being duly sworn, says that he is counsel of record in the above cause; that as such counsel he is authorized to verify the foregoing petition for review; that he has read the said petition and is familiar with the statements contained therein; and that the statements made are true to the best of his knowledge, information and belief.

ELWOOD H. SEAL

SUBSCRIBED AND SWORN TO before me this 18th day of May, 1939.

ADAM A. GIEBEL
*Notary Public in and for the District
of Columbia.*

23 BOARD OF TAX APPEALS FOR THE
DISTRICT OF COLUMBIA

SAFE DEPOSIT & TRUST COMPANY OF BALTIMORE, Executor of
the Estate of H. (HARRY) H. SHELTON, Deceased, Petitioner.

VS.

DISTRICT OF COLUMBIA, Respondent.

DOCKET NO. 168

STATEMENT OF EVIDENCE

The following Stipulation of Facts was filed and made a part of the evidence in the above cause at the hearing before the Board of Tax Appeals for the District of Columbia on April 3, 1939, and constitutes all the evidence submitted:

"STIPULATION OF FACTS

"It is hereby stipulated and agreed between the parties to this proceeding as follows:

"1. Petitioner is a corporation organized and existing under and by virtue of the laws of the State of Maryland with its principal office and place of business at 13 South Street, Baltimore, Maryland.

"2. Petitioner, a fiduciary, is the duly qualified and acting executor of the Estate of H. (Harry) H. Shelton, deceased, pursuant to appointment by the District Court of the United States for the District of Columbia, holding a Probate Court, and brings this proceeding as such executor.

"3. The notice of assessment (statement of alleged Estate tax due) involved in this proceeding was dated December 1, 1938, and the alleged tax, plus interest, was paid by the Petitioner under protest in writing on February 17, 1939, as
24 shown by the copy of the notice of assessment attached hereto, made a part hereof, and marked Exhibit A.

"4. The Petition in this proceeding was filed with the Board of Tax Appeals for the District of Columbia on February 24, 1939.

"5. Pursuant to the provisions of section 301(c) of Title III of the Federal Revenue Act of 1926, as amended, the full amount of the 80% credit allowable to the Petitioner against the Federal Estate tax on account of Inheritance and Estate taxes paid to the District of Columbia is \$2,625.23.

"6. On the 15th day of November, 1938, Petitioner duly and properly filed an Inheritance Tax Return with the Office of the Assessor for the District of Columbia pursuant to the District of Columbia Revenue Act of 1937.

"7. On the 1st day of December, 1938, Petitioner duly and properly filed an Estate Tax Return with the Office of the Assessor for the District of Columbia pursuant to the District of Columbia Revenue Act of 1937.

"8. On November 22, 1938, Respondent duly assessed Inheritance tax in the amount of \$1,168.97 against the Petitioner on account of Eloise Sevier Shelton's share of the Estate of H. (Harry) H. Shelton, deceased, which said Inheritance tax was duly paid to Respondent on or about February 17, 1939, as shown by Exhibit B attached hereto and made a part hereof.

"9. On February 15, 1939, Respondent duly assessed Inheritance tax in the amount of \$1,042.25 against the Petitioner on account of Judith Shelton Weston's share of the Estate of H. (Harry) H. Shelton, deceased, which said Inheritance tax was duly paid to Respondent on or about February 17, 1939, as shown by Exhibit C attached hereto and made a part hereof.

"10. The total amount of the aforementioned Inheritance taxes properly assessed and duly paid to the Respondent is \$2,211.22 and the difference between said total and the full amount of the 80% credit allowed by section 301(c) of Title III of the Federal Revenue Act of 1926, as amended, namely, \$2,625.23, is \$414.01.

"11. The aforesaid Inheritance taxes in the amount of \$2,211.22, which have been duly and properly paid to the Respondent as hereinbefore alleged, are allowable as a part of the 80% credit against the Federal Estate tax in accordance with and pursuant to the provisions of section 301(c) of Title III of the Federal Revenue Act of 1926, as amended, and said \$2,211.22 lacks \$414.01 of being the full amount of said 80% credit.

"12. On December 1, 1938, Respondent assessed an alleged Estate tax against the Petitioner in the amount of \$2,625.23. i. e., in the full amount of the 80% credit allowed by the provisions of section 301(c) of Title III of the Federal Revenue Act of 1926, as amended, and in no way made any reduction

in connection therewith on account of the aforementioned Inheritance taxes paid to the Respondent.

"13. On February 17, 1939, the aforesaid alleged Estate tax in the amount of \$2,625.23 was paid to the Respondent under protest in writing by the Petitioner, together with interest in the amount of \$52.50, as shown by the aforementioned Exhibit A attached hereto and made a part hereof.

"14. The aforementioned Inheritance taxes in the amount of \$2,211.22, plus the aforementioned alleged Estate tax in the amount of \$2,625.23, make a total of \$4,836.45, which total exceeds the full 80% credit allowable under section 301(c) of Title III of the Federal Revenue Act of 1926, as amended, by \$2,211.22.

"15. The issue for decision in the instant case is: Whether the Estate tax legally and properly collectible by the Respondent, pursuant to the District of Columbia Revenue Act of 1937, is in an amount equal only to the extent of the excess of the 80% credit allowed under section 301(c) of Title III of the Federal Revenue Act of 1926, over the amount of the inheritance tax properly paid to the Respondent, pursuant to the District of Columbia Revenue Act of 1937, i. e., whether the Petitioner has overpaid Estate tax to the Respondent in the amount of \$2,211.22, plus interest in the amount of \$44.22.

(Signed) DAVID R. SHELTON

DAVID R. SHELTON,

Counsel for Petitioner.

(Signed) GLENN SIMMON

GLENN SIMMON,

Assistant Corporation Counsel, for the

District of Columbia,

Counsel for Respondent."

The exhibits referred to in the above Stipulation of Facts are the same as Exhibits A, B, and C attached to the Petition filed herein and printed as part of this record.

APPROVED 6-21-39

JO. V. MORGAN,

Member Sole,

*Board of Tax Appeals for the District
of Columbia.*

27 BOARD OF TAX APPEALS FOR THE
DISTRICT OF COLUMBIA

DISTRICT OF COLUMBIA, Petitioner,

VS.

SAFE DEPOSIT & TRUST COMPANY OF BALTIMORE, Executor of
the Estate of H. (HARRY) SHELTON, Deceased, Respondent.

DOCKET NO. 168

CERTIFICATE

I, PHYLLIS A. RAGUSA, Clerk of the Board of Tax Appeals for the District of Columbia, do hereby certify that the foregoing pages, 1 to 27, inclusive, contain and are a true copy of the transcript of record, papers and proceedings on file and of record in my office as called for by the Designation of Record in the Petition for Review in the appeal as above numbered and entitled.

IN TESTIMONY WHEREOF, I hereunto set my hand and affix the seal of the Board of Tax Appeals for the District of Columbia at Washington, in the District of Columbia, this 21st day of June, 1939.

PHYLLIS A. RAGUSA,

Clerk.

*Board of Tax Appeals for the District
of Columbia.*

Endorsed on cover: No. 7450. District of Columbia, Petitioner, vs. Safe Deposit & Trust Co. of Baltimore, Executors. United States Court of Appeals for the District of Columbia. Filed June 22, 1939 Joseph W. Stewart, Clerk.

FILED AUG 21 1939

Joseph W. Stewart

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA

APRIL TERM, 1939

No. 7450

DISTRICT OF COLUMBIA,

Petitioner,

vs.

SAFE DEPOSIT & TRUST COMPANY OF BALTIMORE,
EXECUTORS OF THE ESTATE OF H. (HARRY) H.
SHELTON, DECEASED,

Respondent.

BRIEF ON BEHALF OF THE PETITIONER

ELWOOD H. SEAL,

Corporation Counsel, D. C.,

VERNON E. WEST,

Principal Assistant Corporation Counsel, D. C.,

GLENN SIMMON,

Assistant Corporation Counsel, D. C.,

Counsel for the Petitioner.

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA

APRIL TERM, 1939

No. 7450

DISTRICT OF COLUMBIA,

Petitioner,

vs.

SAFE DEPOSIT & TRUST COMPANY OF BALTIMORE,
EXECUTORS OF THE ESTATE OF H. (HARRY) H.
SHELTON, DECEASED,

Respondent.

BRIEF ON BEHALF OF THE PETITIONER

STATEMENT OF THE CASE

This is an appeal, under the provisions of Title IX of the Act of Congress entitled "An Act To amend the District of Columbia Revenue Act of 1937, and for other purposes," approved May 16, 1938, from a decision of the Board of Tax Appeals for the District of Columbia that an estate tax in the sum of \$2,211.22 and interest thereon in the sum of \$44.22 have been erroneously collected from the respondent (petitioner below).

Title V of the District of Columbia Revenue Act of 1937 became effective at 12:01, A. M., August 18, 1937 (50 Stat. 683, Section 969x, Title 20, 1929 D. C. Code, Supplement IV). Article I of Title V imposes an inheritance tax upon all real property and tangible and intangible personal property, or any

interest therein, having its taxable situs in the District of Columbia, transferred from any person who may die seized or possessed thereof, after the effective date of the Title. In addition to the inheritance taxes imposed by Article I of Title V, there is imposed by Article II of said Title an estate tax upon the transfer of the estate of every decedent who, after the Title became effective, shall die a resident of the District of Columbia.

H. (Harry) H. Shelton died after the effective date of Title V and, pursuant to the provisions of Article I thereof, the respondent, hereinafter referred to as the executor, on November 15, 1938, duly and properly filed an inheritance tax return with the Assessor, D. C. (Rec. p. 21). On November 22, 1938, the District duly assessed against the executor an inheritance tax in the amount of \$1,168.97 on account of the share of decedent's estate transferred to Eloise Sevier Shelton, which said inheritance tax was paid to the Collector of Taxes, D. C., on February 17, 1939 (Rec. p. 22). On February 15, 1939, the District duly assessed against the executor an inheritance tax in the amount of \$1,042.25 on account of the share of decedent's estate transferred to Judith Shelton Weston, which said inheritance tax was paid to the Collector of Taxes, D. C., on February 17, 1939 (Rec. p. 22). The total amount of inheritance taxes assessed to and paid by the executor on account of transfers to beneficiaries under the will of H. (Harry) H. Shelton, deceased, was \$2,211.22.

Pursuant to the provisions of Article II of Title V, the executor, on December 1, 1938, duly and properly filed an estate tax return with the Assessor, D. C. (Rec. p. 22). On December 1, 1938, the District assessed against the executor an estate tax equal to eighty per centum of the Federal estate tax imposed by sub-division (a) of Section 301, Title III of the Revenue Act of 1926, in the amount of \$2,625.23, which said estate tax, together with interest thereon in the amount of \$52.50, was paid to the Collector of Taxes, D. C., on February 17, 1939 (Rec. pp. 22 and 23).

On February 24, 1939, the executor filed a petition with the Board of Tax Appeals for the District of Columbia, alleging

that the District erred in assessing an estate tax against the executor in an amount greater than the difference between the inheritance taxes paid by said executor and eighty per centum of the Federal estate tax imposed by the Revenue Act of 1926 upon the transfer of decedent's estate. On April 24, 1939, the Board sustained the contention of the executor and ordered a refund of estate taxes in the amount of \$2,211.22 plus interest thereon in the sum of \$44.22, alleged to have been erroneously collected from the executor.

The question here presented is whether it was the purpose of Section 18, Article II, Title V, *supra*, to impose a tax equal to eighty per centum of the Federal estate tax imposed by subdivision (a) of Section 301, Title III of the Revenue Act of 1926, as amended, or whether it was intended that Section 18 should impose a tax equal to only the difference between the inheritance taxes imposed by Article I of Title V and eighty per centum of such Federal estate tax. The pertinent sections of Article II of Title V provide as follows:

"SEC. 18. In addition to the taxes imposed by article I, there is hereby imposed upon the transfer of the estate of every decedent who, after this title becomes effective, shall die a resident of the District of Columbia, a tax equal to 80 per centum of the Federal estate tax imposed by subdivision (a) of section 301, title III, of the Revenue Act of 1926, as amended, or as hereafter amended or reenacted.

"SEC. 19. There shall be credited against and applied in reduction of the tax imposed by section 18 of this title the amount of any estate, inheritance, legacy, or succession tax lawfully imposed by any state or Territory of the United States, in respect of any property included in the gross estate for Federal estate-tax purposes as prescribed in title III of the Revenue Act of 1926, as amended, or as hereafter amended or reenacted: *Provided, however,* That only such taxes as are actually paid and credit therefor claimed and allowed against the Federal estate tax may be applied as a credit against and in reduction of the tax imposed by section 18.

"SEC. 20. In no event shall the tax imposed by sec-

tion 18 of this title exceed the difference between the maximum credit which might be allowed against the Federal estate tax imposed by title III of the Revenue Act of 1926, as amended, or as hereafter amended or reenacted, and the aggregate amount of the taxes described in section 19 of this title (but not including the tax imposed by section 18) allowable as a credit against the Federal estate tax.

"SEC. 21. The purpose of section 18 of this title is to secure for the District of Columbia the benefit of the credit allowed under the provisions of section 301 (c) of title III of the Revenue Act of 1926, as amended, or as hereafter amended or reenacted, to the extent that the District of Columbia may be entitled by the provisions of said Revenue Act, by imposing additional taxes, and the same shall be liberally construed to effect such purpose: *Provided*, That the amount of the tax imposed by section 18 of this title shall not be decreased by any failure to secure the allowance of credit against the Federal estate tax."

ARGUMENT

It will be observed that Section 18 imposes a tax equal to eighty per centum of the Federal estate tax and provides that such tax shall be in addition to the inheritance taxes imposed by Article I of Title V. There is no ambiguity in Section 18; the language used therein is clear and requires no interpretation. The only ambiguous language in Article II is found in Section 21 wherein Congress attempted to define the purpose of Section 18. An interpretation section should be used only for the purpose of interpreting words which are ambiguous or equivocal, and not to disturb the meaning of words that are plain. *City Nat. Bank v. Nelson*, 21 Ala. 90, 117 So. 681, 61 A.L.R. 938. Such clauses have been discussed with marked disfavor in England as they embarrass, rather than assist, the courts in their decisions. See *State v. Standard Oil Co.*, 61 Ore. 438, 123 P. 40; Lewis' Sutherland Statutory Construction, Volume 2, Section 577, Page 1066.

The Board of Tax Appeals determined that the ambiguous language of Section 21 created doubt as to the purpose of Sec-

tion 18 and that such doubt should be resolved in favor of the taxpayer and the statute construed strictly against the taxing authority. The reasoning of the Board seems no more logical than the argument that the intended effect of Section 21 is to permit the deduction of inheritance taxes imposed by Article I from the tax imposed by Section 18 and, since doubt concerning the right to deductions must be resolved against the taxpayer, the statute should be interpreted so as to permit no such deduction. It is thought that the rule of construction adopted by the Board is inapplicable to the present situation, and that where the language of the imposing section is plain and unambiguous, as Section 18, and the effect of the defining clause is to create, rather than remove, doubt, it should be disregarded.

Assuming, however, that, because of the ambiguity of Section 21, it is necessary to disregard the clear language of Section 18 and interpret Article II as a whole, it then becomes necessary to ascertain and give effect to the intention of Congress. No question is raised regarding the constitutionality of the Act under either possible construction, nor would either interpretation lead to an absurd result or create injustice. Either interpretation would operate equally upon all persons and neither would create hardship.

The courts have frequently adverted to the fact that if the legislature had intended to accomplish a particular end it would have been a very simple matter for it to have employed appropriate language to express its intention; "it would," it has sometimes been said. "have been easy to say so." 25 R.C.L. 974. If it had been the intention of Congress to limit the tax imposed by Section 18 to the *difference* between the inheritance tax imposed by Article I and eighty per centum of the Federal estate tax that purpose could have been accomplished by stating the intention in explicit language. This purpose could have been easily accomplished either by using explicit language in Section 18 or by including the taxes imposed by Article I in the deductions authorized by Section 19. And, as the Supreme Court pointed out in *Farrington v. Tennessee*, 95 U.S. 689, 24 L. Ed. 558, "it is fairly to be presumed that this

would have been done" if such had been the intention of Congress.

The Act imposing the taxes here in question was passed at the first session of the Seventy-Fifth Congress. Extensive hearings were held before subcommittees of the Committee on the District of Columbia of both the House of Representatives and the Senate. Such hearings were commenced in the House on March 17, 1937, and concluded on May 11, 1937. On March 31, 1937, there was introduced H.R. 6035, "A Bill To provide a tax on the transfers of estates of decedents." Section 10 of this bill is identical to H. R. 1663, introduced January 5, 1937, and provides, in material part, as follows:

"In the event that the total estate taxes imposed by this Act do not equal or exceed, after all deductions for exemptions and otherwise, 80 per centum of the amount of tax imposed upon the value of the estate of such decedent under Title III of the Revenue Act of 1926, providing for a Federal estate tax, an additional tax shall be, and is hereby, imposed on the transfers of estates of decedents as follows: There shall be added to the taxes hereinbefore imposed an amount equal to the *difference* between the total of such taxes hereinbefore imposed plus all other credits allowed by the Federal Act for taxes *paid to the government of the District of Columbia* and to State governments, and 80 per centum of the tax which may be imposed by said Federal Revenue Act. Such taxes are hereby imposed upon the transfers of estates of every decedent who at the time of death was a resident of the District of Columbia. The purpose of this section is to obtain the benefit of the credit allowed under the provisions of section 301 (b) of Title III of the Revenue Act of 1926, to the extent that the District of Columbia may be entitled by the provisions of said Revenue Act, by imposing additional taxes, and the same shall be liberally construed to effect such purpose. Such additional tax herein provided shall be levied and assessed upon transfers of estates which would be liable to the Federal tax as assessed before deducting the 80 per centum provided in said Revenue Act. * * *"
(Italics added.)

The language of Section 10 of H. R. 6035 unequivocally provided that the tax imposed thereby should be equal to the *difference* between the taxes theretofore imposed and eighty per centum of the Federal estate tax and specifically authorized deduction of all other credits allowed by the Federal act for taxes *paid to the Government of the District of Columbia* and to State governments.

On May 4, 1937, the Commissioners submitted to the members of the House District Committee a proposed bill, the purpose of which was to impose a tax, on estates in excess of \$100,000, equal to the difference between succession taxes paid to State governments and eighty per centum of the Federal estate tax plus a tax, on the transfer of estates not exceeding \$100,000, at the rate of one per centum. This bill "followed substantially H. R. 6035" except that the primary purpose of the Commissioners' bill was to impose a tax equal to the full eighty per centum of the Federal estate tax (allowing credit for succession taxes paid to the States but allowing no credit for such taxes paid to the District of Columbia) and, secondarily, to impose a small tax on the transfer of estates less than \$100,000 not reached by the Federal estate tax, whereas, the primary purpose of H. R. 1663 and H. R. 6035 was to impose a tax on the transfer of all estates and, secondarily, in cases where such tax plus any succession taxes paid to the States did not equal the eighty per centum credit allowed by the Federal estate tax law, to impose an additional tax to secure for the District the full amount of such credit. See Hearings, Pages 300 to 310. Section 7 of the Commissioners' bill is quoted on Page 306 of the Hearings as follows:

"In the event that a tax is imposed under title III of the Revenue Act of 1926, providing for a Federal estate tax, an additional tax shall be, and is hereby, imposed on the transfers of estates of decedents as follows: There shall be added to the taxes hereinbefore imposed an amount equal to the difference between the total of all credits allowed by the Federal act for estate, inheritance, legacy, or succession taxes lawfully imposed by and paid to State governments, and 80 percent of the tax which may be imposed by said

Federal revenue act. Such taxes are hereby imposed upon the transfers of estates of every decedent who at the time of death was a resident of or who owned property in the District of Columbia. The purpose of this section is to obtain the benefit of the credit allowed under the provisions of section 301 (b) of title III of the Revenue Act of 1926, to the extent that the District of Columbia may be entitled by the provisions of said revenue act, by imposing additional taxes, and the same shall be liberally construed to effect such purpose. Such additional tax herein provided shall be levied and assessed upon transfers of estates which would be liable to the Federal tax as assessed before deducting the 80 per cent provided in said revenue act. It shall be the duty of executors and administrators of estates, subject to the payment of a Federal estate tax, to file duplicates of the United States tax returns with the probate court of the District of Columbia."

On May 11, 1937, the Commissioners submitted to the House District Committee a revised draft which apparently became the bill which was enacted into law as Title V of the District of Columbia Revenue Act of 1937 and which is now before this Court for interpretation. Hearings before the House and Senate District Committees indicate that it was the intention of the Commissioners to retain, as the primary object of the law, the provision (as expressed in Section 7 above) securing to the District the full eighty per centum of the Federal estate tax and, instead of a supplemental tax on estates of less than \$100,000 as provided in the draft submitted on May 4, to substitute an inheritance tax, *at low rates*, on the shares of individual beneficiaries. In explaining the proposed bill, Raymond Sparks, Assistant Corporation Counsel, stated, on Page 331 of Hearings before the House District Committee:

"As you will notice, by using those expressions they have done a good deal toward shortening and simplifying the rest of the article and it provides in general for taking advantage of the District's share of 80 per cent of the Federal tax computed under the 1926 act. So that under a bill similar to this one the District

would collect its proper share of that 80 percent credit, and, in addition, a tax upon the shares of the beneficiaries of every estate."

In H. R. 7472, introduced on June 10, 1937, the language of Article II of Title V appears just as it finally was approved. Hearings on H. R. 7472 were held before the Senate District Committee on June 28, 29 and 30, 1937. In response to a question by Senator King, Chairman of the Committee, regarding the Commissioners' interpretation of Title V, Elwood H. Seal, Corporation Counsel of the District, replied:

"The Commissioners recommended a very low inheritance tax which would bring in \$200,000. The estates tax recommended would bring in \$600,000. Of course, it is understood that *the inheritance tax is in addition to the estates tax.*" Page 49. (Italics added.)

It seems that two significant conclusions can reasonably be drawn from the Hearings before the House and Senate Committees:

(a) The House Committee had before it H. R. 1663 and H. R. 6035, both of which provided in explicit and unequivocal language that the estate tax should equal *only the difference* between the total of taxes theretofore imposed, plus all other credits allowed by the Federal act for taxes *paid to the Government of the District of Columbia* and to State governments, and eighty per centum of the tax imposed by the Federal estate tax law. Likewise, the Maryland law which was discussed before the House Committee (Hearings p. 328, et seq.) clearly imposes a tax upon only the *excess, if any*, of the eighty per centum Federal credit over the aggregate estate, inheritance, succession or legacy taxes paid to any State, Territory or the District of Columbia, "including also such taxes of any of the above kinds as are imposed by the State of Maryland other than the 'Maryland Estate Tax.'" The fact that Congress omitted such plain and explicit language from Article II of Title V clearly indicates an intention to impose a different tax, i. e., a tax equal to eighty per centum of the Federal estate tax.

(b) It clearly appears that Congress adopted the bill recommended by the Commissioners, and that it was the intention of the Commissioners to impose an estate tax equal to the entire eighty per centum of the Federal estate tax and impose a supplemental or additional tax, *at very low rates*, upon the individual shares inherited by beneficiaries.

In its argument before the Board of Tax Appeals, the executor pointed out that in numerous States imposing both estate and inheritance taxes the expressed purpose of such estate tax laws was to assure the State of obtaining the full eighty per centum credit allowed by the Federal act, by imposing additional taxes to the extent, if any, that the eighty per centum credit allowed by the Federal act exceeded the inheritance taxes imposed by such states (and other states and territories), and argued that the same intent should be imputed to Congress, regardless of the fact that Congress used language in Title V different from that found in the State statutes. The Board of Tax Appeals was of opinion that the fact of the departure in the instant case from the practice of many States was persuasive. There is no rule of construction which supports the argument of the executor or the opinion of the Board of Tax Appeals. It seems illogical to argue that the fact that Congress departed from the theory of numerous State laws indicates an intention to follow such laws. Any weight to which the fact of departure may be entitled would seem to support the argument that such departure was intended by Congress.

Section 4 of Title VII of the District of Columbia Revenue Act of 1937 authorized the Commissioners to make such rules and regulations as might be necessary to carry out the provisions of the act. Pursuant thereto, the Commissioners, on November 3, 1937, promulgated regulations pertaining to inheritance and estate taxes, Section 23 of which provides as follows:

“(a) In addition to the taxes imposed by Article I, there is imposed upon the transfer of the estate of every decedent who, after said title becomes effective, that is to say, after 12:01 A. M., August 18, 1937,

shall die a resident of the District of Columbia a tax equal to 80 per centum of the Federal Estate Tax imposed by Subdivision (a) of Section 301, Title III, of the Revenue Act of 1926, as amended or as hereafter amended or reenacted.

“(b) The taxes provided by Paragraph (a) of this section shall in no wise be taken as a credit upon or to reduce the taxes provided in Article I of said Title; and *the taxes provided in Article I of said Title shall in no wise be taken as a credit upon or to reduce the taxes provided in Paragraph (a) of this section.*” (Italics added.)

Section 23 is consistent with the language of Section 18 of Article II of Title V; it represents the views of the Commissioners expressed before both the House and Senate District Committees at the time the legislation was presented and discussed. Regulations made pursuant to express authority, which constitute contemporaneous construction by those who drafted the legislation and are charged with its administration are entitled to respectful consideration and should not be overruled except for weighty reasons.

Norwegian Nitrogen Co. v. United States, 288 U.S. 294, 315;

Fawcus Machine Co. v. United States, 282 U.S. 375, 378;

Brewster v. Gage, 280 U.S. 327, 336;

Logan v. Davis, 233 U.S. 613, 627;

Komada v. United States, 215 U.S. 392, 396;

United States v. Moore, 95 U.S. 760, 763;

Wilbur v. Texas, 59 App. D. C. 275, 40 F. (2d) 787, certiorari denied 282 U.S. 843;

Commonwealth Commercial State Bank v. Lucas, 59 App. D. C. 317, 319, 41 F. (2d) 111;

Christopher v. Burnet, 60 App. D. C. 365, 367, 55 F. (2d) 527;

District of Columbia v. Smith, 63 App. D. C. 363, 72 F. (2d) 735.

Such regulations should not be interfered with by a court unless clearly unlawful. *McCarl v. United States, ex rel Leland*, 59 App. D. C. 362, 42 F. (2d) 346, certiorari denied 282

U.S. 839; *Red River Broadcasting Co. v. Federal Communications Commission*, 69 App. D. C. 1, 98 F. (2d) 282.

It appears that Congress in adopting the bill submitted by the Commissioners also adopted the original interpretation of Article II as stated by representatives of the District at Hearings before the House and Senate District Committees. This view is strengthened by the fact that, since promulgation of Section 23 of the Commissioners' regulations, *supra*, Congress has amended and reenacted Title V without changing the language of the sections here in question. The Act to amend the District of Columbia Revenue Act of 1937, approved May 16, 1938, 52 Stat. 360, amended both Article I and Article II of Title V. The District of Columbia Revenue Act of 1939, approved July 26, 1939, reenacted Title V and the only change in Article II was a renumbering of the sections thereof. Congress, in amending and reenacting Article II of Title V, must be taken to have been familiar with the interpretation thereof by the Commissioners of the District and the restatement of the provisions of Article II, in the light of such interpretation, amounts to confirmation of that interpretation.

United States v. Safety Car Heating Co., 297 U.S. 88, 95;

McFeely v. Comm., 296 U.S. 102, 108;

Brewster v. Gage, *supra*;

National Lead Co. v. United States, 252 U.S. 140;

Commonwealth Commercial State Bank v. Lucas, *supra*.

CONCLUSION

For the reasons stated above, it is respectfully submitted that the decision of the Board of Tax Appeals for the District of Columbia was incorrect and should be reversed.

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United States Court of Appeals for the
District of Columbia

APRIL TERM, 1939

No. 7450.

DISTRICT OF COLUMBIA,
PETITIONER,

vs.

SAFE DEPOSIT & TRUST COMPANY OF BALTI-
MORE, EXECUTOR OF THE ESTATE OF H.
(HARRY) H. SHELTON, DECEASED,
RESPONDENT.

BRIEF FOR RESPONDENT.

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BRIEF FOR RESPONDENT.

Opinion Below.

The opinion of the Board of Tax Appeals for the District of Columbia (R. 7-14) sustains the position of the Executor, bears No. 117, and was promulgated on April 24, 1939.

Question Presented.

Whether the purpose of the additional estate tax imposed by Article II, Title V of the District of Columbia Revenue Act of 1937 is, *like that of every other*

taxing jurisdiction having a comparable law, to collect an estate tax only to the extent that the inheritance tax payable to the District of Columbia does not amount to the 80% credit allowed by section 301(c) of Title III of the Federal Revenue Act of 1926; or whether the purpose of such additional estate tax is, unlike any such tax imposed by any of the other fifty-two taxing jurisdictions consisting of the states and territories of the United States, to collect again an amount equal to said 80%, regardless of the fact that the District of Columbia may have, through its inheritance tax, received part, all, or more than the full amount of the 80% credit to which it is entitled under section 301(c) of Title III of the Federal Revenue Act of 1926.

Statement of Facts.

The facts involved in this proceeding are not in dispute. They have been agreed to in a stipulation signed on behalf of the parties and filed with the Board of Tax Appeals for the District of Columbia. That stipulation (R. 21-23) is incorporated herein by reference.

Summary of Argument.

I. From the legislative history of the inheritance and estate tax law contained in the District of Columbia Revenue Act of 1937, it is entirely clear that the District of Columbia Commissioners, both through Commissioner Hazen personally and through their representative, Mr. Sparks, Assistant Corporation Counsel, recommended to Congress the enactment of an estate tax law having as its purpose the imposition of a tax to secure to the District of Columbia the

benefit of the 80% credit allowed under section 301(c) of Title III of the Revenue Act of 1926 to the extent that such credit is not secured to the District of Columbia under its inheritance tax. This recommendation to Congress is fully shown (a) by unequivocal and explicit statements made by Commissioner Hazen and Mr. Sparks before the Congressional Committee considering the matter, (b) by repeated reference to the inheritance and estate tax law of Maryland, (c) by carefully prepared estimates presented to Congress on behalf of the Commissioners of the District of Columbia with respect to the amount of revenue which it was thought would be raised by the enactment of an inheritance and estate tax law as recommended, and (d) by the actual language of the statute as finally enacted by Congress and approved by the President.

II. The recommendation of the Commissioners of the District of Columbia and the position of the Executor in the instant case are fully in accord with the purpose and application of inheritance and estate tax laws as enacted throughout the forty-eight states and the territories of the United States. This is shown by reference to such laws in each of the states and territories of the United States.

III. The District of Columbia estate tax law as enacted by Congress imposes an estate tax, in addition to the inheritance tax, only to the extent that the inheritance tax fails "to secure for the District of Columbia the benefit of the credit allowed under the provisions of section 301(c) of Title III of the Revenue Act of 1926, as amended." This is supported (a) by the letter, spirit, and purpose of the law *as expressly*

stated therein, as well as (b) by its legislative history and (c) by the construction placed on comparable statutes in other jurisdictions.

IV. The construction of the District of Columbia estate tax law contended for by the Petitioner in this case would, if sustained, render the statute in question so utterly arbitrary and capricious that it would be unconstitutional and void. This becomes at once apparent when it is pointed out that such a construction would mean that the law (a) discriminates against the estates of resident decedents which pay an inheritance tax to the District of Columbia and in favor of those which pay inheritance taxes to the states or territories and (b) discriminates against the District of Columbia's own revenue in favor of that of other jurisdictions. Certainly, such a result does violence to every principle of reasonable classification in taxation and cannot be upheld under the terms of the Fifth Amendment to the Constitution of the United States.

V. The Executor's position is supported by controlling decisions of the United States Supreme Court. It is well settled (a) that a "statute must be construed, if fairly possible, so as to avoid not only the conclusion that it is unconstitutional, but also grave doubts upon that score;" (b) that the courts will not impute to Congress a purpose that would lead to manifest injustice, public injury, or absurd consequences; (c) that "in case of doubt" with respect to "the interpretation of statutes levying taxes," such doubt must be "construed most strongly against the government, and in favor of the citizen;" and (d) it would seem that if any inference is to be drawn from the action of Con-

gress in reenacting the statute in question in the District of Columbia Revenue Act of 1939, months after the opinion in this case below enunciating the proper construction of the statute was promulgated, it must be that Congress approved the construction given by the Board below.

ARGUMENT.

Point I.

Legislative History.

Title V of the District of Columbia Revenue Act of 1937 was enacted by the 75th Congress and became effective on August 18, 1937. On May 4 and May 11, 1937, hearings were held before the House of Representatives Subcommittee of the Committee on the District of Columbia relating to the enactment of an inheritance and estate tax law applicable to the District of Columbia. It seems advisable to quote the pertinent parts of the report of those hearings as follows:

“Commissioner Hazen. If you would like to hear it, we have this inheritance-tax bill and Mr. Sparks is present, who has been working on this bill.

“Mr. Dirksen. I think we should go right ahead with what you have here on the inheritance taxes.

“STATEMENT OF RAYMOND SPARKS,
ASSISTANT CORPORATION COUNSEL,
DISTRICT OF COLUMBIA.

“Mr. Kennedy. State your full name to the reporter, Mr. Sparks, and give your position, please.

“Mr. Sparks. My name is Raymond Sparks, assistant corporation counsel, District of Columbia. I will pass these copies to you. They were written up late last night and I made some correc-

tions in ink, as you will note on the copies." (p. 299.)

* * * * *

"Mr. Sparks. These are the Virginia percentages. * * *"

"Now, this bill with respect to the actual tax provides also that the tax shall be computed upon the basis of 80 percent of the credit allowed under the Federal act of 1926. Section 301 (b) of that act allows to any taxpayer a credit for State or District of Columbia inheritance taxes and not to exceed 80 percent of the Federal tax. So that this bill, following the Virginia act, provides that the tax shall also be imposed upon that basis, *but that if the tax based upon the 80-percent credit exceeds the tax based upon the percentages as provided in the first two sections that the tax on the credit shall be the tax and shall take the place of the tax computed according to the percentages of the first two sections.*

"Mr. Dirksen. You are offering this in addition to the so-called estate tax?"

"Mr. Sparks. We have two bills here, Mr. Dirksen."

"Mr. Dirksen. Are you offering this bill in the place of the one you brought up last week?"

"Mr. Sparks. Yes, sir."

"Mr. Dirksen. Oh, you are?"

"Mr. Sparks. Yes, sir."

"Mr. Dirksen. *Some of the States, of course, have both?*

"Mr. Sparks. Yes, sir. And I might say that *the Maryland act, which the Commissioners do favor and prefer to any of these, has both.*

"Mr. Cole. Do you not contemplate recommending both?"

"Mr. Sparks. Yes; but I say *the Commissioners favor an act similar to that based upon the Maryland act.* Of course, this does cover both inheritances and estates."

"Mr. Cole. That is not this one?"

"Mr. Sparks. That is this one; they are both offered to the committee.

"Mr. Dirksen. *Have you estimated what might be derived under a bill similar to the Maryland Code?*

"Mr. Sparks. It would be certainly at least \$800,000.

"Mr. Dirksen. It should be a good deal more?

"Mr. Sparks. Yes, sir; and probably more, because under the act that would follow the Maryland act we would get at least our share of the 80 percent on the estate tax and then get a percentage on the shares of the recipients of the estate.

"I briefly explained the Virginia act so you would have it. But I might say that this act we are now considering, which is based on the Virginia act, would merely take advantage of the credit—at least, the tax would be not less than our share of the credit—and any additional would be merely by virtue of the percentages upon which the tax was based against the shares, but there would not be the two taxes.

"Mr. Cole. How many State inheritance and State tax laws include this 80-percent provision you are speaking about?

"Mr. Sparks. Nearly every State attempts to capture that credit, and a good many of them have even gone back prior to the date of their own act and have captured a considerable part of the money that had already been paid in to the Bureau of Internal Revenue by virtue of the refunds being granted the taxpayer by the Bureau of Internal Revenue.

"That is all the explanation I have for that.

"Mr. Dirksen. Then, Mr. Sparks, your suggestion would be that instead of making this purely an estate tax, we have a *combination* of estate tax plus inheritance tax?

"Commissioner Hazen. *Yes, sir; and we discussed both of those bills yesterday afternoon.*

"Mr. Dirksen. I think it is much more desirable to put a tax on an inheritance which is accu-

mulated without any particular effort on the part of the person who is inheriting.

"Commissioner Hazen. Last evening we had a meeting with the Board of Commissioners, and this committee and *they all agreed that the Maryland law was more desirable* than the endorsed act, with certain modifications that Mr. Sparks has recommended.

"Mr. Dirksen. You made no estimate as to how much more than \$800,000 might be realized?

"Commissioner Hazen. I do not know how much. I suppose it might reach \$1,000,000, Mr. Sparks?

"Mr. Sparks. I should think so. It would, however, depend upon the percentages.

"Mr. Cole. Have you combined the estate and inheritance features in the bill you brought in last week, or haven't you presented it?

"Mr. Sparks. I have not presented it.

"Mr. Cole. The one we considered last week?

"Mr. Sparks. That was purely an estate-tax measure.

"Mr. Cole. This is inheritance?

"Mr. Sparks. Yes.

"Mr. Cole. And now you have a third one?

"Mr. Sparks. No. The one we have just been discussing is inheritance based on the law of Virginia. We do not have an estate tax.

"Now, the one in Maryland, which is different from the one proposed just now, has both.

"Commissioner Hazen. *And that is the one the Commissioners prefer.* (Italics ours.) (pp. 328-330.)

* * * *

"Mr. Sparks. * * *

"Now, the first article is tax on the shares of the beneficiaries as I have stated. It provides for 1 percent tax on the shares which go to the father, mother, husband, wife, and children who are lineal descendants.

"And the second class would include brothers and sisters, nieces, nephews, strangers, and any

organizations or associations taxed at the rate of 7½ percent on their shares, which also seems to be rather high. I think that a spread of from 1 to 5 percent would be sufficient, so the three classes would take 1 percent, 3 percent, and 5 percent, *which would probably be sufficient because under the second article, which provides for an estate tax, an attempt is made to capture the 80-percent credit which would assure us our share of the 80-percent Federal tax.*" (Italics ours) (pp. 330-331.)

On June 28, 1937, comment was made before the United States Senate Committee on the District of Columbia as follows:

"Mr. Carruthers. * * *.

"The next is, Title V. Inheritance and Estate Taxes. We have broken that into two articles, one and two. The federation opposes the inheritance tax *in toto*, but favors the imposition of an estate tax that would give the District the benefit of the 80-percent credit, according to the Revenue Act of 1926, *believing that that is the practice now in vogue in all of the States except Nevada.*

"A number of States have imposed this tax just in order to get the 80 percent credit, and that is the stand of the federation.

"The Chairman. What is the attitude of the Commissioners on that?

"Mr. Seal. The Commissioners recommended a very low inheritance tax which would bring in \$200,000. The estates tax recommended would bring in \$600,000. Of course, it is understood that *the inheritance tax is in addition* to the estates tax.

"Mr. Carruthers. Comparatively few of the States have both, but most of them have only one. Sometimes it is called an inheritance or an estate tax. As I understand it *they get the credit of 80 percent whether it is called inheritance or estate.* The truth of the matter is, as you know, the estate pays before it is distributed and the other fellow pays it when he gets it from the beneficiary." (Italics ours.) (p. 49.)

Thus it is seen (a) from statements of Commissioner Hazen, Mr. Dirksen, and Mr. Sparks that the enactment of a combination inheritance and estate tax law was recommended to Congress, (b) that it was expressly and repeatedly stated that the Commissioners favored an act based upon the Maryland law, and (c) that Mr. Dirksen asked Mr. Sparks for an estimate as to "what might be derived from a bill similar to the Maryland Code" and Mr. Sparks replied that it would be "at least \$800,000," and that this same \$800,000 estimate was included in Mr. Seal's statement to the Senate Committee.

From the foregoing it seems entirely clear (1) that the District of Columbia officials recommended an inheritance and estate tax law for the District similar to that of Maryland and every indication is that the Congressional Committees approved the recommendation and (2) that the purpose of the estate tax law was "to secure for the District of Columbia the benefit of the credit allowed under the provisions of section 301(c) of Title III of the Revenue Act of 1926, as amended, * * * to the extent that the District of Columbia may be entitled," just as was the purpose with respect to the Maryland law, the Virginia law, and the law of every other American taxing jurisdiction having a similar law. That this was the understanding of Congress is further shown by the fact that *such a declaration of purpose was expressly written into Article II of Title V as enacted.*

It will be noted that in the Petitioner's brief Mr. Seal relies upon his comment before the Senate Committee to the effect that "the inheritance tax is in ad-

dition to the estate tax." However, section 18 of Title V of the District of Columbia Revenue Act of 1937, like similar enactments in Maryland, Delaware, Kentucky, Minnesota, Montana, Nebraska, New Hampshire, New Jersey, Rhode Island, South Carolina, Tennessee, Texas, Vermont, and Wisconsin, speaks of the estate tax as being "in addition" to the inheritance tax. We think that no useful purpose would be served by entering into a discussion as to whether the inheritance tax is in addition to the estate tax or whether the estate tax is in addition to the inheritance tax. Insofar as the present case is concerned, *our problem is to determine how much "in addition" may properly be collected by the District of Columbia as an estate tax.*

It will be further noted that in the Petitioner's brief in the instant case the following statement is made at page 10:

"It clearly appears that Congress adopted the bill recommended by the Commissioners, and that it was the intention of the Commissioners to impose an estate tax equal to the entire eighty per centum of the Federal estate tax and impose a supplemental or additional tax, *at very low rates*, upon the individual shares inherited by beneficiaries."

We respectfully ask that this statement be tested in the light of the facts. We know of no such recommendation or statement of any such intention by the Commissioners. It is our understanding, after a careful review of the reports of the committee hearings, that the recommendation and intention expressed by the Commissioners was to the contrary. And as for the

“very low rates” referred to, it will be further noted that the rates adopted by Congress closely approximate those contained in the Maryland law and in their operation, in accordance with the Executor’s position and the position taken by the Board below, collect exactly the same amount of tax that would have been collected under the Maryland law had this estate been subject thereto. Those same alleged “very low rates,” in accordance with the Petitioner’s contention in the instant case, would collect \$2,255.44 more tax for the District of Columbia than an identical estate, under identical circumstances, would be required to pay under the Maryland law. This clearly refutes the Petitioner’s argument with respect to the rates involved.

The Maryland law, on which the District of Columbia law was patterned, provides in this respect as follows:

“§2. Tax imposed.—*In addition to the tax and/or taxes imposed by Article 81, a ‘Maryland Estate Tax’ is hereby imposed upon the transfer of the ‘Maryland Estate’ of every ‘Decedent,’ the amount of which ‘Maryland Estate Tax’ shall be equal to the extent, if any, of the excess of the ‘Credit’ over the aggregate of ‘State Taxes,’ payable by or out of the ‘Maryland Estate’ of the ‘Decedent’ or any part thereof, provided, however, that such ‘Maryland Estate Tax,’ hereby imposed shall in no case exceed the extent to which its payment will effect a saving or diminution in the amount of the ‘Federal Estate Tax,’ payable by or out of the ‘Estate’ of the ‘Decedent’ had this Article not been enacted. (1929, ch. 275, sec. 2.).*” (Italics ours.)

As set out in our stipulation of facts the 80% credit allowed by the Federal law in the instant case on

account of "estate, inheritance, legacy, or succession taxes actually paid to * * * the District of Columbia" is in the amount of \$2,625.23. If the H. H. Shelton Estate were subject to the Maryland law, a total inheritance tax in the amount of approximately \$2,311.22 would be payable and an estate tax only in the amount of \$314.01, the sum of the two making up the full 80% credit. In other words, the estate tax imposed by Maryland "in addition" to the inheritance tax is in an amount sufficient to carry out the purpose of the law and no more.

It is also perfectly clear that the Virginia law, which was considered by Congress in enacting the District of Columbia law, imposes an estate tax only "where the inheritance tax does not exhaust the 80% credit allowed by the Federal Estate Tax, Revenue Act of 1926." Prentice-Hall, Inheritance and Transfer Tax Service, paragraphs 101 and 151. This is, of course, as we shall subsequently point out in detail, the system followed in every taxing jurisdiction which has adopted a combination inheritance and estate tax law like that of the District of Columbia.

From the foregoing facts relating in the legislative history of Title V of the District of Columbia Revenue Act of 1937, it certainly seems that Congress intended to enact a statute similar to the inheritance tax and estate tax laws of Maryland and the other states of the Union having this system of making certain that they secure the full benefit of the 80% credit allowed by the Federal law which would otherwise go to the Federal Government. That Congress did carry out this intention will be further shown under our sub-

sequent point dealing with the purpose and application of the inheritance and estate tax laws imposed by various of the fifty-three taxing jurisdictions applicable to American citizens.

Point II.

Purpose and Application of Inheritance and Estate Tax Statutes as enacted throughout the forty-eight states and the territories of the United States.

We have prepared a summary of the death duty laws imposed by the fifty-three taxing jurisdictions, comprising the forty-eight states of the Union, the District of Columbia, the incorporated territories of Alaska and Hawaii, and the unincorporated territories of Puerto Rico and the Philippine Islands. This summary is attached hereto and marked Appendix A.

From Appendix A it will be seen that of the fifty-three taxing jurisdictions mentioned, one imposes neither an inheritance nor an estate tax, *i. e.*, no death duties; nine impose only an estate tax; eleven impose only an inheritance tax; and thirty-two, including the District of Columbia, have enacted inheritance and estate tax laws similar to that of the District.

Thus, eliminating the District of Columbia, we find that the inheritance and estate tax laws of thirty-one of the taxing jurisdictions are pertinent to our discussion here because of their similarity to Title V of the District of Columbia Revenue Act of 1937. These thirty-one jurisdictions are: California, Colorado, Connecticut, Delaware, Hawaii, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana,

Nebraska, New Hampshire, New Jersey, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Vermont, Virginia, Washington, and Wisconsin.

Reference to Appendix A will show that not a single state of the Union nor a single one of the territories seeks to collect more tax under its estate tax statute than is sufficient to absorb any part of the 80% credit allowed by section 301(c) of Title III of the Federal Revenue Act of 1926 which is not absorbed by its inheritance tax statute. In other words, the District of Columbia, in the instant proceeding, is seeking a construction of Title V which is different from and contrary to the construction given to similar statutes in every other jurisdiction in which they have been enacted.

Clearly, the provisions of the District law do not "sanction such rare and exceptional taxation." *United States v. Goellet*, 232 U. S. 293, 58 L. Ed. 610.

For purposes of illustration we have quoted verbatim the pertinent provisions of the inheritance and estate tax laws of twenty-two states and also the law of Hawaii. These are attached hereto and marked Appendix B.

To enter into an extensive discussion of the material contained in Appendix A and Appendix B would run this brief to undue length. Therefore, we will only give examples from that material. However, we earnestly and respectfully state that upon a careful study of the appendices, the conclusion inevitably follows that the position taken by the Petitioner in the instant case is wholly without merit. Certainly if Con-

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gress sought to enact a law for the District of Columbia different from any that has ever been enacted in any of the states or territories of the United States, it must do so in unmistakable language. *United States v. Goelet, supra.*

The statutes quoted in Appendix B show that in imposing the estate tax to absorb the excess of the 80% credit, if any, over the inheritance taxes payable, many of the states provide that such estate tax shall be "in addition" to the inheritance tax. In some instances this means that the full amount of the 80% credit is imposed as an estate tax and the inheritance tax allowed as a credit. In most instances, however, it is clear that a tax is imposed only to the extent that the 80% credit exceeds the inheritance tax and, therefore, no credit for inheritance tax is necessary or allowed. See, for example, the California, Delaware, Hawaii, Indiana, Kansas, Kentucky, Maine, Maryland, Minnesota, Montana, Nebraska, New Hampshire, New Jersey, Oklahoma, South Carolina, Tennessee, Texas, Vermont, Virginia, and Wisconsin statutes, all of which impose an estate tax "in addition" or "an additional Estate Tax" to absorb the difference, if any, between the inheritance tax and the 80% credit. Inasmuch as the imposition of the estate tax is only for the purpose of securing to the state the share of the 80% credit to which it may be entitled, there is no necessity for a credit provision.

The Montana statute, which is quoted below, may be used to illustrate the system adopted by the various states:

"(Par. 20) (a) Estate tax.—In addition to the taxes hereinabove imposed, an estate tax is here-

by imposed upon the transfer of all estates which are subject to an estate tax under the provisions of the United States Revenue Act of 1926, and amendments thereto, where the decedent, at the time of his decease, was a resident of this state. The amount of said estate tax shall be equal to the extent, if any, of the excess of the credit of not exceeding eighty per cent (80%), allowable under said United States Revenue Act, over the aggregate amount of all estates, inheritance, transfer, legacy and succession taxes paid to any state or territory or the District of Columbia, in respect to any property in the estate of said decedent. Provided, that such estate tax hereby imposed shall in no case exceed the extent to which its payment will effect a saving or diminution in the amount of the United States Estate Tax payable by, or out of the estate of the decedent, had subdivisions (a) to (h) not been enacted. The tax imposed herein shall be collected by the several county treasurers or the State Treasurer and distributed as hereafter provided.

* * * * *

“(Par. 26) (g) Intent of subdivisions (a) to (h).—It is hereby declared to be the intent and purpose of subdivisions (a) to (h) to obtain for this state the benefit of the credit allowed under the provisions of said United States Revenue Act, to the extent that this state may be entitled by the provisions of said Act, by imposing additional taxes and the same shall be liberally construed to effect this purpose.”

The statement of purpose in most of the estate tax laws of the various states is substantially *identical* to the statement of purpose contained in section 21 of the District of Columbia Revenue Act of 1937. See particularly the statement of purpose as contained in the estate tax laws of Hawaii, Indiana, Kentucky, Maine, Minnesota, Montana, New Hampshire, Rhode Island, Vermont, Virginia, and Wisconsin.

We respectfully submit that an identical statement of purpose when used in a statute for the District of Columbia means the same thing as that statement of purpose when used in a statute for the states or territories. Therefore, it is obvious that either the position of the Petitioner in the instant case is wrong or every other jurisdiction is misconstruing its law and ignoring the purpose stated therein and has been so doing for years.

West Virginia is the only jurisdiction which has ever attempted to construe its law like the construction now contended for by the District of Columbia. There was some basis for such a construction in the case of West Virginia, because its law contained an entirely different statement of purpose, *i. e.*, the stated purpose of the West Virginia law was "to take full advantage of the credit allowed" by the Federal law, rather than "to secure * * * the benefit of the credit * * * to the extent that * * *" it "may be entitled," as is the case of the District of Columbia law and the law of so many of the other jurisdictions. Regardless of this distinction, however, the Supreme Court of Appeals of West Virginia held the law inoperative. *Charleston National Bank et al. v. Fox*, 182 S. E. 91 (1935).

Point III.

District of Columbia Estate Tax Law as enacted by Congress.

At this point it seems advisable to quote the pertinent sections of the District of Columbia Revenue Act of 1937 as follows:

“Article II—Estate Taxes.

“Sec. 18. In addition to the taxes imposed by article I, there is hereby imposed upon the transfer of the estate of every decedent who, after this title becomes effective, shall die a resident of the District of Columbia, a tax equal to 80 per centum of the Federal estate tax imposed by subdivision (a) of section 301, title III, of the Revenue Act of 1926, as amended, or as hereafter amended or reenacted.

“Sec. 19. There shall be credited against and applied in reduction of the tax imposed by section 18 of this title the amount of any estate, inheritance, legacy, or succession tax lawfully imposed by any State or Territory of the United States, in respect of any property included in the gross estate for Federal estate-tax purposes as prescribed in title III of the Revenue Act of 1926, as amended, or as hereafter amended or reenacted: *Provided, however,* That only such taxes as are actually paid and credit therefor claimed and allowed against the Federal estate tax may be applied as a credit against and in reduction of the tax imposed by section 18.

“Sec. 20. In no event shall the tax imposed by section 18 of this title exceed the difference between the maximum credit which might be allowed against the Federal estate tax imposed by title III of the Revenue Act of 1926, as amended, or as hereafter amended or reenacted and the aggregate amount of the taxes described in section 19 of this title (*but not including the tax imposed by section 18*) allowable as a credit against the Federal estate tax.

“Sec. 21. *The purpose of section 18 of this title is to secure for the District of Columbia the benefit of the credit allowed under the provisions of section 301 (c) of title III of the Revenue Act of 1926, as amended, or as hereafter amended or reenacted, to the extent that the District of Columbia may be entitled by the provisions of said Rev-*

enue Act, by imposing additional taxes, and the same shall be liberally construed to effect such purpose: Provided, That the amount of the tax imposed by section 18 of this title shall not be decreased by any failure to secure the allowance of credit against the Federal estate tax." (Italics ours.)

It is seen from the above quotation that section 18 uses the familiar term "in addition." See discussion *supra* and Appendix B attached hereto. The words, "In addition to the taxes imposed by article I," with which section 18 opens and on which the District of Columbia so much relies, clearly show that Congress was enacting the usual combination inheritance and estate tax law. Had Congress intended to enact an estate tax law bearing no relationship to the inheritance tax law, there would have been no occasion to use this language familiar to like laws in other jurisdictions. On the contrary, Congress would have omitted those words and section 18 would have begun: "There is hereby imposed," etc.

Section 19 then proceeds to allow as a credit any estate, inheritance, legacy, or succession tax paid to any state or territory of the United States. It would have been poor draftsmanship and meaningless to have included the District of Columbia in section 19 because, as we shall subsequently point out, the only estate tax imposed insofar as the District of Columbia is concerned is in the amount by which the 80% Federal credit exceeds the District of Columbia inheritance tax.

Section 20 makes it doubly clear that the District of Columbia estate tax is not to exceed that part of the 80% credit not absorbed by inheritance, legacy, or

succession taxes paid to the states or territories. It is significant to note the parenthetical statement contained in section 20 to the effect that the tax imposed by section 18 is not to be allowed as a credit against itself. Certainly when we find Congress being so careful to delimit the credit, it would not have failed to include the tax imposed by Article I of Title V in the parenthetical statement if no benefit could be derived with respect thereto under Article II.

Section 21 clearly, unequivocally, and in language familiar to many of the other similar statutes throughout the Union expressly provides that "*the purpose of section 18 * * * is to secure for the District of Columbia the benefit of the credit allowed under the provisions of section 301 (c) of Title III of the Revenue Act of 1926, as amended, * * * to the extent that the District of Columbia may be entitled by the provision of said Revenue Act, by imposing additional taxes, and the same shall be liberally construed to effect such purpose.*" We feel that section 21 should make any further discussion unnecessary, it being our position that the English language does not have one meaning in Indiana, Kentucky, Maine, Minnesota, Montana, New Hampshire, Rhode Island, Vermont, Virginia, Wisconsin, and Hawaii, and an entirely different meaning when it comes to levying taxes on the estate of a deceased resident citizen of the District of Columbia.

The Petitioner's brief, at page 5, states, in substance, that if Congress had intended to enact a law for the District of Columbia like that of every other jurisdiction having a comparable law, "that purpose could

have been accomplished by stating the intention in explicit language." And this statement is made in face of the fact that section 21 of Article II, Title V of the District of Columbia Revenue Act of 1937 specifically states the purpose of section 18 in language identical to that of other similar statutes. We respectfully submit that Congress did state its purpose and intention with all possible explicitness and clarity.

Nevertheless, we will proceed to examine the nature of the imposition of tax made by the District of Columbia estate tax statute. Undeniably, the purpose of the law is to secure the benefit of the 80% credit for the District of Columbia to the extent that it may be entitled. In the instant case the full amount of the 80% credit to which the District of Columbia is entitled is in the sum of \$2,625.23. The District of Columbia has received \$2,211.22 of that very same credit through the collection of inheritance tax from this Respondent. It is a matter of simple arithmetic that the payment of \$414.01 as estate tax secures to the District of Columbia every penny of the benefit of the 80% credit allowed by the Federal Law.

A simple illustration will afford to show the complete lack of merit—and even injustice—of the Petitioner's position in the instant case: Mr. A owes Mr. B \$100.00 and gives Mr. B a chattle mortgage on his automobile to secure the payment thereof. Mr. A makes monthly payments in the amount of \$10.00 to Mr. B for six months and fails to make any further payments. Certainly Mr. B cannot enforce his chattel mortgage to collect an amount greater than \$40.00, *i. e.*, the full amount to which he is entitled from Mr. A. If Mr. B

should go into court and seek to secure the full \$100.00, ignoring the \$60.00 already paid, he would meet with no more success than the District of Columbia should have in the instant proceeding.

Section 301(c) of Title III of the Revenue Act of 1926, as amended, is explicit and reads as follows:

“The tax imposed by subdivision (a) of this section shall be credited with the amount of any estate, inheritance, legacy, or succession taxes actually paid to any State or Territory or the District of Columbia, in respect of any property included in the gross estate (not including any such taxes paid with respect to the estate of a person other than the decedent). The credit allowed by this subdivision shall not exceed 80 per centum of the tax imposed by subdivision (a) (after deducting from such tax the credits provided by subdivision (b)), and shall include only such taxes as were actually paid and credit therefor claimed within four years after the filing of the return required by section 304 * * *.”

Thus it is clear that the Respondent has paid to the District of Columbia \$2,211.22 of the 80% credit allowed by the Federal law. *This is admitted by the Petitioner and is stipulated to be a fact.* See paragraph 11 of Stipulation of Facts. (R. 22.) Therefore, only \$414.01 of the 80% credit remains and that is all that can properly be collected to secure to the District of Columbia the full benefit of that credit to the extent that it is entitled.

There is nothing strange about the District of Columbia estate tax law. The readily understandable purpose of Congress in enacting that statute, like the readily understandable purpose of the states and territories, is to make certain that the District of Colum-

bia, rather than the Federal Government, gets the full benefit of the 80% credit allowed by the Federal estate tax law. For practical purposes, it makes no difference whether the local taxing jurisdiction's estate tax statute imposes an estate tax for the full 80% credit and then allows the inheritance tax as a credit in reduction thereof, on the one hand, or whether such estate tax statute imposes an estate tax only to the extent that the 80% credit exceeds the amount of inheritance taxes payable to the particular taxing jurisdiction, on the other hand. However, section 21 of the District law makes it obvious that the District estate tax statute *imposes an estate tax against the estate of a resident decedent only to the extent that the 80% Federal credit exceeds the inheritance taxes payable to the District of Columbia.*

This analysis is necessarily correct inasmuch as section 21 provides that "section 18 of this title," i. e., the tax imposing section, secures for the District "the benefit of the credit * * * to the extent that the District of Columbia may be entitled." Therefore, in view of the fact that the District law *makes no imposition* of any estate tax, except insofar as the District of Columbia inheritance tax does not amount to the full 80% credit allowed by the Federal Revenue Act, *there was no reason or necessity for an exemption provision.*

Obviously, an exemption provision is needed only where a tax is imposed. This is illustrated by the statutes of many of the states previously referred to. See above and Appendix B. But, more important, it is illustrated by section 19 of Article II of Title V of the

District of Columbia Revenue Act of 1937 which expressly provides for a credit insofar as estate, inheritance, legacy, or succession taxes paid to any state or territory of the United States are concerned. Such an exemption was necessary in that instance, because the District estate tax law imposes an additional tax to secure the full 80% credit *for the District*. If section 21 had been enacted so as to read that the purpose of section 18 is to secure the full benefit of the 80% credit to the District *or* to the states or territories, there would have been no necessity for section 19 in any form. However, since the purpose of the law was to secure the full benefit of the 80% credit, we repeat, *for the District*, it was necessary to have section 19 to provide exemptions against the tax imposed to cover situations where the District does not get the full benefit of the 80% credit, *i. e.*, the full amount of the tax imposed. Thus section 19 covers cases where—and only such cases—the District of Columbia does not get the full benefit of the 80% credit because all or some part thereof is paid as a death tax to the states or territories.

In the case of H. H. Shelton's Estate, no contention is made that the District of Columbia is not entitled to collect an estate tax covering the full amount by which the 80% Federal credit exceeds the District of Columbia inheritance taxes, and thus secure for the District *every dollar and cent of the tax imposed by its law*. We do, however, most earnestly and respectfully object to an exaction *in excess of the full amount of estate tax imposed by the letter, spirit, and explicitly stated purpose of the District law*.

Point IV.

Constitutionality of the District of Columbia estate tax statute.

In the course of its argument, Petitioner's brief (page 5) makes the following statement: "

"* * * No question is raised regarding the constitutionality of the Act under either possible construction, nor would either interpretation lead to an absurd result or create injustice. Either interpretation would operate equally upon all persons and neither would create hardship."

With respect to that statement we wish to point out:

(a) That the Executor in the proceeding below devoted five pages of its brief and a considerable part of its oral argument to the question "regarding the constitutionality of the Act" under the construction contended for by the Petitioner.

(b) That, likewise, the Executor in the proceeding below devoted a considerable part of its brief and its oral argument to Supreme Court cases dealing with the absurd result and injustice which would be created by sustaining the contention made by the Petitioner.

(c) That the Executor also urged below, both in its brief and in its oral argument, the manner in which the statute in question would operate unequally and unfairly if the Petitioner's attempted construction were sustained.

We think that clearly this Honorable Court will not be concerned with the constitutionality of the District of Columbia estate tax law in the instant case. This is due to the fact that the position taken by the Executor

is undoubtedly sound and, therefore, under a proper construction of the statute it does not violate the provisions of the Fifth Amendment to the Constitution of the United States.

However, we do want to call to the attention of the Court the fact that the construction contended for in this case by the District of Columbia would, if sustained, mean that the statute in question is so utterly arbitrary and capricious that it violates the Fifth Amendment. When we stop to realize that the Petitioner's theory of the District of Columbia estate tax law is to the effect that inheritance, legacy, and succession taxes paid to the states or territories of the United States reduce the amount of the 80% credit allowable to the District of Columbia and yet the payment of such an inheritance tax to the District itself in no way affects the 80% credit to which the District is entitled, it becomes at once apparent that, if that construction is sound, the law does violence to every principle of reasonable classification in taxation.

The principle involved was stated by the Supreme Court of the United States in the case of *Heiner v. Donnan*, 285 U. S. 312, 76 L. Ed. 772, holding a Federal taxing statute unconstitutional, as follows:

"Nor is it material that the 14th Amendment was involved in the Schlesinger Case, instead of the 5th Amendment, as here. *The restraint imposed upon legislation by the due process clauses of the two amendments is the same.* Coolidge v. Long, 282 U. S. 582, 596, 75 L. ed. 562, 566, 51 S. Ct. 306. *That a federal statute passed under the taxing power may be so arbitrary and capricious as to cause it to fall before the due process of law clause of the 5th Amendment is settled.* Nichols v.

Coolidge, 274 U. S. 531, 542, 71 L. ed. 1184, 1192, 52 A. L. R. 1081, 47 S. Ct. 710; Brushaber v. Union P. R. Co., 240 U. S. 1, 24, 25, 60 L. ed. 493, 504, 36 S. Ct. 236; Tyler v. United States, *supra* (281 U. S. p. 504, 74 L. ed. 998, 69 A. L. R. 758, 50 S. Ct. 356).'' (Italics ours.)

What could be more unreasonable, arbitrary, and capricious than a taxing statute penalizing the Respondent for paying an inheritance tax to the District of Columbia and giving a premium to another decedent's estate for paying an inheritance tax to some other taxing jurisdiction, *i. e.*, to any of the states or territories? It is difficult to imagine how a more unreasonable classification could be made and a more discriminatory situation created. If the Petitioner's construction be sound, not only does the District of Columbia inheritance and estate tax law penalize a resident decedent for dying with his property in the District of Columbia, but it also discriminates against its own revenue and encourages the payment of inheritance or succession taxes by District citizens to the states or territories.

The case of *District of Columbia v. Brooke*, 214 U. S. 138, 33 L. Ed. 941, dealt with the constitutionality of a statute enacted for the District of Columbia which allegedly discriminated between residents and non-residents. It was held in that case that "under the circumstances presented by this record, the distinction between residents and non-residents is a proper basis for classification. It might not be under other circumstances." The court in effect held that there was no material discrimination in the *Brooke* case. However, from the principles enunciated, it seems certain that

a taxing statute for the District of Columbia which (1) discriminates against the District of Columbia's own revenue and (2) penalizes the resident citizens of the District of Columbia for paying taxes to the District of Columbia, rather than to the states or territories, is so far beyond the bounds of reasonable classification as to be completely null and void. The mere statement of this proposition shows the utter lack of foundation for the Petitioner's position here.

In dealing with a somewhat analogous situation, the Court of Appeals of Maryland, only a few months ago (March 22, 1939), in *Blaustein v. State Tax Commission, et al.*, 4 Atl. (2d) 861, held a Maryland statute levying an income tax on the income derived to Maryland beneficiaries from trust estates located outside of Maryland and not levying a like tax under other circumstances to be unconstitutional and, therefore, invalid "because it sets up an arbitrary and unreasonable discrimination between persons of the same general class." To say the least, the "arbitrary and unreasonable discrimination" with which the Court of Appeals of Maryland was concerned in the *Blaustein* case, *supra*, was no greater than would be the case if the construction now sought by the District of Columbia were upheld. The *Blaustein* case dealt with the Fourteenth Amendment to the Constitution, but, of course, that amendment bears the same relationship to state laws that the Fifth Amendment bears to Federal laws. *Heiner v. Donnan, supra*.

Point V.

The Respondent's Position is fully supported by controlling decisions of the United States Supreme Court.

The Supreme Court has many times held that the courts will not impute to Congress a purpose that would lead to manifest injustice, inconvenience, public injury, oppression, or absurd consequences. *Lionberger v. Rowse*, 9 Wall. 468, 19 L. Ed. 721; *Bate Refrigerating Co. v. Sulzberger*, 159 U. S. 1, 39 L. Ed. 601; *United States v. Kirby*, 7 Wall. 482, 19 L. Ed. 278; *Bird v. United States*, 187 U. S. 118, 47 L. Ed. 100. Thus in *Knowlton v. Moore*, 178 U. S. 41, 44 L. Ed. 969, 984, the Supreme Court sums up the rule as follows:

“* * * In the arguments of counsel tables are found which show how inevitable and profound are the inequalities which the construction must produce. Clear as is the demonstration which they make, they only serve to multiply instances afforded by the one example which we have just given.

“We are therefore bound to give heed to the rule that, where a particular construction of a statute will occasion great inconvenience or produce inequality and injustice, that view is to be avoided if another and more reasonable interpretation is present in the statute. *Bate Refrigerating Co. v. Sulzberger*, 157 U. S. 37, 39 L. ed. 611, 15 Sup. Ct. Rep. 508; *Wilson v. Rousseau*, 4 How. 646, 680, 11 L. ed. 1141, 1156; *Bloomer v. McQuewan*, 14 How. 339 353, 14 L. ed. 532, 538; *Blake v. National Banks*, 23 Wall, 307, 320, 23 L. ed. 119, 121; *United States v. Kirby*, 7 Wall, 482, 486, 19 L. ed. 278, 280.” (Italics ours.)

Another well-established rule of construction was stated by Mr. Justice Holmes, speaking for the Supreme Court, in *United States v. Jin Fuey Moy*, 241 U. S. 374, 401, 60 L. Ed. 1061, 1064, as follows:

“A statute must be construed, if fairly possible, so as to avoid not only the conclusion that it is unconstitutional, but also grave doubts upon that score. *United States ex rel. Atty. Gen. v. Delaware & H. Co.*, 213 U. S. 366, 408, 53 L. ed. 836, 849, 29 Sup. Ct. Rep. 527.”

We respectfully submit that the construction of Article II of Title V of the District of Columbia Revenue Act of 1937 contended for by the Petitioner in the instant case is condemned by every one of the foregoing Supreme Court opinions and many others which could be cited.

The Petitioner in its brief seeks to anticipate and avert the foregoing rules of construction, as well as the construction which has been placed upon comparable laws in many other jurisdictions, by contending at page 10 of its brief “It seems illogical to argue that the fact that Congress departed from the theory of numerous state laws indicated an intention to follow such laws.” The Executor, of course, has never made any such argument, it being our position that Congress did not depart from the theory of numerous state laws.

We respectfully submit that it is not illogical to argue that identical language stating an identical purpose indicates that Congress did not intend to and did not, in fact, depart from the theory of the numerous state laws referred to above and also referred to in the Petitioner’s brief. In this connection, it will suffice to quote from the opinion below as follows:

“The identical language in section 21 is found in statutes of ten states and territories imposing an estate tax to take advantage of the 80 per centum credit allowed under the Federal Revenue Act of 1926. Substantially the same language is found in statutes of two other states * * *.”

We again submit that it is logical to say, and reasonable to believe, that identical language in a taxing statute for the District of Columbia has a meaning identical to such language used in taxing statutes of the states or territories.

We think there is no doubt that the Executor's position in the instance case is sound and that the construction of the statute involved for which it contends is supported by both the letter and the spirit of Article II of Title V. However, if there is doubt the Respondent must, nevertheless, prevail. The guiding principle was stated by the Supreme Court of the United States, without dissent, in the case of *Gould v. Gould*, 245 U. S. 151, 62 L. Ed. 211, in unmistakable language as follows:

“In the interpretation of statutes levying taxes it is the established rule not to extend their provisions, by implication, beyond the clear import of the language used, or to enlarge their operations so as to embrace matters not specifically pointed out. *In case of doubt they are construed most strongly against the government, and in favor of the citizen.* United States v. Wigglesworth, 2 Story, 369, Fed. Cas. No. 16,690; American Net & Twins Co. v. Worthington, 151 U. S. 468, 474, 35 L. ed 281, 824, 12 Sup. Ct. Rep. 55; Benziger v. United States, 192 U. S. 38, 55, 48 L. ed. 331, 338, 24 Sup. Ct. Rep. 189.” (Italics ours.)

See also Mr. Justice Stone's opinion, speaking for a unanimous court, in *Reinecke v. Northern Trust Co.*, 278 U. S. 339, 349, 73 L. Ed. 410, 415.

Again we find that the Petitioner's brief seeks to anticipate and forestall the above rule of construction which has been repeatedly enunciated by the Supreme Court. Thus, at page 4 of its brief, the Petitioner contends, in effect, that section 21 of the District of Columbia Revenue Act of 1937 should be ignored inasmuch as it will "embarrass, rather than assist," this court in its decision. Petitioner's brief further argues at page 5 that inasmuch as the effect of section 21 "is to create, rather than remove, doubt, it should be disregarded." This argument and admission of doubt on the part of the District of Columbia seems clearly to attract the rule of construction laid down in *Gould v. Gould*, *supra*, and *Reinecke v. Northern Trust Co.*, *supra*. Certainly this court cannot be embarrassed by construing the applicable statute as a whole and in accordance with well-defined rules of construction followed by the Supreme Court of the United States.

The Petitioner's brief concludes with the argument (page 12) that inasmuch as Congress has re-enacted the District of Columbia estate tax law, with which we are here concerned, subsequent to the promulgation of the Commissioner's regulations, it "amounts to confirmation" of the interpretation now sought by the District of Columbia in this case. We think that in the light of the considerations and authorities hereinbefore discussed, the Commissioner's regulations are clearly invalid and, therefore, that the Petitioner's contention is entirely without merit.

However, we wish to call the attention of the court to the fact that the opinion of the Board below expressly held that "the regulation is invalid and should conform to the ruling made in this opinion." That opinion of the Board was promulgated on April 24, 1939. The District of Columbia Revenue Act of 1939, re-enacting the estate tax law with which we are here concerned, was approved on July 26, 1939. Certainly the holding of the Board declaring the regulations invalid and sustaining the construction sought by the Executor was known to Congress throughout its consideration of the District of Columbia Revenue Act of 1939. Consequently, it would seem that if any inference is to be drawn from the action of Congress, it would be to the effect that the interpretation promulgated by the Board in this case below was confirmed.

Conclusion.

In the light of the authorities cited and discussed above, as well as in the light of sound reason and principle, the Executor submits that the opinion of the Board of Tax Appeals for the District of Columbia is sound and should be affirmed.

Respectfully submitted,

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APPENDIX A.

State or Territory	Nature of tax and extent of imposition	Reference to paragraphs of Prentice-Hall Inheritance & Transfer Tax Service
Alabama	Imposes no inheritance tax. Imposes estate tax to secure only its share of 80% credit allowed by Federal Revenue Act of 1926.	101 and 151
Alaska	Imposes only an inheritance tax. No estate tax is imposed.	101 and 151
Arizona	Imposes only an estate tax. No inheritance tax is imposed.	101 and 151
Arkansas	Imposes only an inheritance tax. No estate tax is imposed.	101 and 151
California	Imposes both an inheritance and an estate tax: "The estate tax is imposed to absorb the 80% credit allowed under the Federal estate tax law. If the inheritance tax imposed by California amounts to less than the maximum credit of 80% of the Federal estate tax, under the Revenue Act of 1926, the tax imposed by California is increased so that the amount due the state reaches the maximum amount of the credit allowed." See also provision in California law expressly providing for refund in event more than the 80% credit is collected.	101, 151, 34, 35 and 36

State or Territory	Nature of tax and extent of imposition	
Colorado	Imposes both an inheritance and an estate tax. The purpose of the estate tax is to absorb the 80% credit allowed under the Federal estate tax law and the inheritance tax is allowed as a credit.	101, 151, and 25-A
Connecticut	Imposes both an inheritance and an estate tax. The additional tax imposed by the estate tax law is solely for the purpose of securing "the amount by which 80% of the Federal estate tax imposed by the Revenue Act of 1926 exceeds the aggregate of all estate, inheritance or succession taxes actually paid to the several states, including the Connecticut inheritance tax."	101 and 151
Delaware	Imposes both an inheritance and an estate tax. The estate tax is designed to take up the 80% credit allowed under the Federal estate tax law and in the event the inheritance tax "is equal to or greater than the aforesaid credit, allowed by Federal estate Tax law or laws, then the said estate shall be exempt from the Delaware Estate Tax prescribed by this section."	101, 151, 49, and 50

State or Territory	Nature of tax and extent of imposition	
District of Columbia	It is interesting to note that, in the light of the regulations promulgated by the District Commissioners, Prentice-Hall does not undertake to describe the nature of the District of Columbia estate tax, but merely quotes the <i>regulations</i> without comment thereon.	151
Florida	Imposes no inheritance tax. Imposes an estate tax solely for the purpose of securing only its share of the 80% credit allowed by the Federal estate tax law.	101, 141, and 151
Georgia	Enforces only an estate tax to absorb its share of the 80% credit allowed under the Federal estate tax law.	101 and 151
Hawaii	Imposes both an inheritance and an estate tax. The estate tax is imposed as an additional tax to secure the amount by which the 80% credit allowed by the Federal estate tax law exceeds the inheritance or other legacy or succession taxes, including the Hawaii inheritance tax.	101, 151, 6-D, 6-E, 6-F, 6-G, and 6-H
Idaho	Imposes only an inheritance tax. No estate tax is imposed.	101 and 151
Illinois	Imposes only an inheritance tax. No estate tax is imposed.	101 and 151

State or Territory	Nature of tax and extent of imposition	Reference to paragraphs of Prentice-Hall Inheritance & Transfer Tax Service
Indiana	Imposes both an inheritance and an estate tax. "An estate tax is added in resident estates that are subject to the Federal estate tax. This added tax is the amount by which 80% of the Federal estate tax imposed by the Revenue Act of 1926 exceeds the aggregate of all estate, inheritance or succession taxes actually paid to the several states, including the Indiana inheritance tax."	101, 151, 89, and 93
Iowa	Imposes both an inheritance and an estate tax. "The object of the" estate "tax is to absorb the 80% credit under the Federal tax law and in no case is the state tax to exceed the difference between that credit and all other estate, or inheritance taxes paid to Iowa and any other state or territory."	101, 151, and 100-B
Kansas	Imposes both an inheritance and an estate tax. "The estate tax is imposed in addition to the inheritance tax * * *" and the "measure of the tax in resident estates is the amount by which 80% of the gross Federal estate tax under the Revenue Act of 1926 exceeds the total amount of the Kansas inheritance tax."	101, 151, and 3

State or Territory	Nature of tax and extent of imposition	Reference to paragraphs of Prentice-Hall Inheritance & Transfer Tax Service
Kentucky	Imposes both an inheritance and an estate tax. "The purpose of the" estate "tax is to absorb the credit allowed under the Federal Revenue Act of 1926 for taxes paid to the states, and the amount of the tax is the excess, if any, of 80% of the Federal estate tax under the 1926 Act over the aggregate inheritance tax otherwise payable to Kentucky."	101, 151, 24, and 26
Louisiana	Imposes both an inheritance and an estate tax. The estate tax secures only the difference between the credit allowed under the Federal statute and the total amount of inheritance taxes paid to the several states, including the Louisiana tax.	101 and 151
Maine	Imposes both an inheritance and an estate tax. The amount of the estate tax is the amount by which the 80% credit allowed by the Federal law exceeds the amount of inheritance, etc., taxes.	101, 151, 47, 48, and 50
Maryland	Imposes both an inheritance and an estate tax. The estate tax is imposed only to the extent that the inheritance taxes paid to Maryland and other states or territories do not make up the full 80% credit allowed by the Revenue Act of 1926.	101, 151, 152, and 51

State or Territory	Nature of tax and extent of imposition	
Massachusetts	Imposes both an inheritance and an estate tax. The estate tax is imposed only to the extent that the inheritance, etc., taxes do not make up the full 80% credit allowed by the Revenue Act of 1926.	101, 151, and 50
Michigan	Imposes both an inheritance and an estate tax. The amount of the estate tax is the difference between the aggregate of all inheritance taxes paid to Michigan and other jurisdictions and the 80% credit allowed by the Federal Revenue Act of 1926.	101, 151, and 152
Minnesota	Imposes both an inheritance and an estate tax. "Resident estates are also subject to an estate tax whenever 80% of the Federal estate tax exceeds the aggregate of all estate and succession taxes paid" to Minnesota or the other states.	101, 151, 152, and see particularly 99-E and 99-H
Mississippi	Imposes only an estate tax. No inheritance tax is imposed.	101, 141, 142, 143, and 144
Missouri	Imposes both an inheritance and estate tax. The estate tax is equal to the difference between the aggregate of all inheritance taxes paid to the several states, including Missouri, and 80% credit allowed by the Federal Revenue Act of 1926.	101 and 151

State or Territory	Nature of tax and extent of imposition	Reference to paragraphs of Prentice-Hall Inheritance & Transfer Tax Service
Montana	Imposes both an inheritance and an estate tax. The "estate tax is imposed in resident estates equal to the extent of the excess of the 80% credit allowed under the Federal Revenue Act of 1926 over the aggregate amount of all" inheritance, etc., taxes.	101, 151, and see particularly 20(a) and 26(g)
Nebraska	Imposes both an inheritance and an estate tax. The "estate tax is merely supplemental to the inheritance tax, its purpose being that the entire credit allowed by the Federal estate tax act to the states may be exhausted."	101, 151, and see particularly 21 and 27
Nevada	Imposes neither an inheritance nor an estate tax.	
New Hampshire	Imposes both an inheritance and an estate tax. The estate tax is equal to the difference between the 80% credit allowed by the Federal Revenue Act of 1926 and the aggregate amount of all inheritance, etc., taxes paid to New Hampshire or other jurisdictions.	101, 151, and see particularly 75 and 80
New Jersey	Imposes both an inheritance and an estate tax. The estate tax imposed is equal to the amount by which the 80% credit allowed by the Federal	101, 151, and see particularly 89 and 99-D

State or Territory	Nature of tax and extent of imposition	Reference to paragraphs of Prentice-Hall Inheritance & Transfer Tax Service
	Revenue Act of 1926 exceeds the aggregate amount of all inheritance, etc., taxes paid to any state or territory.	
New Mexico	Imposes only an inheritance tax. No estate tax is imposed.	101, 151, and 152
New York	Old Law: Imposed both an inheritance and an estate tax. The estate tax was imposed in the amount by which 80% of the Federal estate tax exceeded the aggregate of the inheritance, etc., taxes paid to New York or the other states or territories. New Law: Since September 1, 1930, no inheritance tax has been imposed. Only an estate tax is imposed and should such "tax imposed at graduated rates not equal the maximum credit allowed to the estate by any revenue act of the United States," an additional tax is imposed to secure New York's full share of the 80% credit allowed by the Federal Revenue Act of 1926.	101, 151, and 152 101, 141, 142, 143, 144 and 151
North Carolina	Imposes both an inheritance and an estate tax. The estate tax is imposed only to the extent that the inheritance tax does not amount to the full 80% credit allowed by the Federal Revenue Act of 1926.	101, 151, and 152

State or Territory	Nature of tax and extent of imposition	Reference to paragraphs of Prentice-Hall Inheritance & Transfer Tax Service
North Dakota	Imposes no inheritance tax. Only an estate tax is imposed.	101, 141, 142, 143, and 144
Ohio	Imposes both an inheritance and an estate tax. The estate tax is credited with the amount of Ohio inheritance tax and all the death duties paid to other states and the District of Columbia.	101 and 151
Oklahoma	Imposes no inheritance tax. Only an estate tax is imposed. The present law contains a provision for "a supplemental estate tax * * * imposed in order to have the full advantage of the Federal credit in estates where the estate tax does not equal 80% of the estate tax under the Federal Revenue Act of 1926."	101, 102, 151, 13, and 3
Oregon	Imposes two death duties, one of which is a true inheritance tax and the other of which "is not a true estate tax as it remains a tax upon each specific gift, legacy, or inheritance, but computed upon the aggregate value. * * * No estate tax to absorb the 80% credit allowed under the Federal estate tax, Revenue Act of 1926, is imposed."	101

State or Territory	Nature of tax and extent of imposition	
Pennsylvania	Imposes both an inheritance and an estate tax. The "estate tax is imposed where the aggregate of taxes paid to the states and territories of the United States is less than the credit allowed therefor by the Federal estate tax." This, of course, includes "Inheritance taxes paid to Pennsylvania and other states."	101 and 151
Philippine Islands	Imposes only an inheritance tax. No estate tax is imposed.	101 and 151
Puerto Rico	Imposes only an inheritance tax and imposes no estate tax as such.	2
Rhode Island	Imposes both inheritance and estate taxes. "The purpose of the graduated estate tax is to appropriate to Rhode Island the 80% credit allowed under the Federal estate tax act" and whenever such taxes exceed the 80% credit there will be a refund of "such excess to the person by whom the tax imposed * * * was paid."	101, 151, and see particularly 54, 57, and 58
South Carolina	Imposes both an inheritance and an estate tax. The estate tax's "purpose is to absorb that part of the 80% credit allowed under the Federal estate tax, Revenue Act of 1926, section 301 (c), not absorbed by the inheritance tax."	101, 151, and see particularly 44

State or Territory	Nature of tax and extent of imposition	
South Dakota	Imposes an inheritance tax. No estate tax is imposed.	101 and 151
Tennessee	Imposes both an inheritance and an estate tax. The amount of the estate tax "is the amount by which 80% of the gross Federal estate tax under the 1926 act exceeds the amount of all inheritance," etc., taxes paid to Tennessee or other jurisdictions.	101, 151, and see particularly 89
Texas	Imposes both an inheritance and an estate tax, which latter is known as an additional inheritance tax. Such additional inheritance tax "is equal to the difference between the sum of the Texas inheritance tax and 80% of the total sum of the estate tax imposed by the Federal Government under the Revenue Act of 1926 * * *. The purpose of the additional inheritance tax is to collect only a sufficient additional tax when necessary for the State to get the full benefit of the 80% credit allowed by the Revenue Act of 1926."	101, 151, and see particularly 34, 36, 37, 38, and 41
Utah	Imposes an estate tax. No inheritance tax is imposed although its estate tax is termed an inheritance tax.	101, 141, 142, 143, and 144

State or Territory	Nature of tax and extent of imposition	
Vermont	Imposes both an inheritance and an estate tax. The amount of the estate tax "is the sum by which 80% of the Federal estate tax under the revenue act of 1926 exceeds the total of all" inheritance, etc., "taxes paid to the several states."	101, 152, and see particularly 70 and 75
Virginia	Imposes both an inheritance and an estate tax. The estate tax is imposed only "where the inheritance tax does not exhaust the 80% credit allowed by the Federal estate tax, Revenue Act of 1926." Further quote: "The estate tax takes the place of the inheritance tax where it is greater than the aggregate of the Virginia inheritance taxes. Since its object is to take up the 80% credit allowed under the Federal estate tax, Revenue Act of 1926, allowance is made for inheritance taxes paid in other states."	101, 151, and see particularly 39, 42, and 43
Washington	Imposes both an inheritance and an estate tax. The estate tax is "equal to the difference between the inheritance tax payable to the state and the 80% credit allowed under the Federal estate tax, Revenue Act of 1926."	101 and 151

State or Territory	Nature of tax and extent of imposition	
West Virginia	Enforces only an inheritance tax. The estate tax was held to be invalid when the West Virginia administrative officials sought to construe the estate tax as "an additional tax, separate and distinct from the inheritance tax, and equal to the maximum amount of the credit allowed under the Federal estate tax, Revenue Act of 1926.* * *." (<i>Charleston National Bank et al., Executors v. Fox</i> , (1935) 182 S. E. 91.)	101, 151, and see particularly 56
Wisconsin	Imposes both an inheritance and an estate tax. The estate tax imposed is equal to "the excess of the credit of 80% allowable under the Federal Revenue Act of 1926 over the aggregate amount of all estate and inheritance taxes."	101, 151, and see particularly 77 and 83
Wyoming	Imposes only an inheritance tax. No estate tax is imposed.	101 and 151

APPENDIX B.

California:

"(Par. 34) Estate tax—rate—how paid.—(12) Where the tax imposed by this act is of a lesser amount than the maximum credit of the Federal estate tax allowed by the Federal estate tax law because of said tax herein imposed, then the tax provided for by this act shall be increased so that

the amount of tax due this state shall be the maximum amount of the credit allowed under said Federal estate tax law. Said additional tax shall be paid out of the same funds as any other ordinary charge against the estate.

“(Par. 35) Where no tax is imposed by this act because of the exemptions herein, or for any other reason, and a tax is due the United States under the Federal estate tax law, then a tax shall be due this State equal to the maximum amount of the credit allowed under said Federal estate tax law.

“(Par. 36) Should the amount of tax in this act increased by this section be afterwards found to be more than the maximum credit allowed under the Federal estate tax law, then any excess over and above the said maximum credit shall be refunded as is provided in subdivision 4 of section 11 of this act. Said application for refund must be made within six months after said maximum credit has been determined by the Federal government.”

Colorado:

“ARTICLE 4. ADDITIONAL TAX TO TAKE ADVANTAGE
OF CREDIT ALLOWED ON FEDERAL ESTATE TAX

* * * * *

“(Par. 25-A) The tax imposed by this article shall be credited with the amount of any estate, inheritance, legacy, or succession taxes actually paid to any state or territory of the United States or the District of Columbia, including any tax imposed under the other articles of this chapter in respect of any property included in the gross estate. In no event shall the tax payable under this article exceed the amount, if any, by which the maximum credit allowable to the estate against the United States estate tax exceeds the credits provided for in the preceding sentence of this section. (L. '33, p. 573, § 4.)”

Delaware:

“Article 11
Delaware Estate Tax
143, § 109

“(Par. 49) Delaware estate tax; estates subject to tax; administration and enforcement; collection of tax by State Tax Department.—In addition to the tax prescribed by Article 10 of this Chapter, there shall be a tax to be known as ‘Delaware Estate Tax’ on the estate of every person dying after the twenty-sixth day of February, 1926, and who at the time of his death was a resident of the State of Delaware, provided such estate is in the class of estates that are subject under the laws of the United States to a federal estate tax.

“(Par. 50) The said Delaware Estate Tax upon the estate of every decedent as aforesaid shall be computed as follows: The aggregate amount of the taxes due to the State of Delaware under the provisions of Article 10 of this Chapter in respect to any property, or estate, or interest therein, belonging to the decedent at the time of his death shall first be ascertained. To such amount there shall be added the aggregate amount of all estate, inheritance, legacy, and succession taxes actually paid to any other state or territory of the United States or to the District of Columbia in respect to any property owned by such decedent or subject to such taxes as a part of or in connection with his estate. The sum resulting from such addition shall then be deducted from an amount equal to the amount of the maximum credit allowable to the estate of the decedent by the Federal Estate Tax law or laws for estate, inheritance, legacy or succession taxes paid to any State or territory or the District of Columbia. The remainder shall constitute and be the Delaware Estate Tax upon the estate of the decedent. In case of any estate where the amount to be deducted as aforesaid is equal to or greater than the

aforesaid credit, allowed by Federal Estate Tax law or laws, then the said estate shall be exempt from the Delaware Estate Tax prescribed by this section."

Hawaii:

"§ 2062

"(Par. 6-D) Hawaii estate tax.—1. Whenever the estate of any decedent who, at the time of death, was a resident of the Territory, shall be subject to an estate tax under the federal estate tax law, and the tax imposed by section 2060 of this chapter shall be less than the credit of eighty per centum allowed by the federal estate tax law, the tax imposed by section 2060 shall be increased by the imposition of an additional tax so that the total amount of tax payable to the Territory under said section and this paragraph, upon or in respect of the transfer of such estate, shall be equal to the maximum amount of the credit allowed under the federal estate tax law. The additional tax imposed by this paragraph shall be credited with the amount of any constitutionally valid estate, inheritance, legacy or succession taxes actually paid to any state or to any other territory or to the District of Columbia, in respect of any property included in the gross estate, but the amount to be so credited shall in no event exceed the amount of additional tax imposed by this paragraph in respect of the property upon which the tax to be credited was imposed. For the purpose of this paragraph the amount of additional tax imposed hereby in respect of any particular item or items of property shall be deemed to be that proportion of the total additional tax imposed by this paragraph upon the entire net estate which the value of such item or items bears to the value of the entire gross estate. Where any such tax has been paid to any state or other territory of the United States or the District of Columbia with respect to property included in the gross estate and other property, so as to make an apportionment necessary in deter-

mining the amount of credit hereunder, such tax shall be apportionated in the ratio that the value of the particular item or items of property included in the gross estate is to the gross value of the entire property on which such tax was imposed. Credit under this section shall be allowed only if such taxes are actually paid and claim for credit is made within three years after the date of the decedent's death, except that the treasurer may, for good cause shown, extend the period for payment of such taxes and for making such claim. For the purposes of this paragraph the gross estate does not include real property situated or tangible personal property having its actual situs without the Territory.

* * * * *

“(Par. 6-H) It is the intent and purpose of this section to obtain for the Territory the benefit of the credit allowed by the federal estate tax law to the extent that the Territory may be entitled under the provisions of said law by imposing additional taxes, and this section shall be liberally construed to effect this purpose. All administrative and other provisions of this chapter shall, so far as not inapplicable to or inconsistent with the provisions of this section, be applicable to the additional tax imposed by this section as well as to the tax imposed by section 2060. The treasurer may make such regulations, not inconsistent with law, relative to the assessment and collection of the additional tax imposed by this section, as may be necessary or proper for carrying out the intent of this section. (L. 1931, c. 211, s. 1.)”

Indiana:

“§ 6-2438

“(Par. 89) Estate tax.—An additional inheritance tax shall be and is hereby imposed upon all estates which are subject to an estate tax under the provisions of the United States Revenue Act of 1926 where the decedent at the time of his decease was a resident of this state. The amount of

said tax shall be the amount by which eighty (80) per cent of the estate tax imposed by the United States government under the provisions of said Revenue Act of 1926 exceeds the aggregate amount of all estate, inheritance, legacy, transfer and succession taxes actually paid to the several states of the United States or the District of Columbia, in respect to any property in estate, inheritance, estate or legacy of said decedent. * * *

“§ 6-2440

“(Par. 93) Estate tax; purpose; regulations; administration; appropriation.—It is hereby declared to be the intent and purpose of sections 38 and 39 (§§ 6-2438, 6-2439) of this act to obtain for this state the benefit of the credit allowed under the provisions of said Title III, section 301, subsection (b) of the United States Revenue Act of 1926 to the extent that this state may be entitled by the provisions of said act by imposing additional taxes and the same shall be liberally construed to effect this purpose. The state board of tax commissioners may make such regulations relative to the assessment and the collection of the tax provided by this section, not inconsistent with law, as may be necessary to carry out this intent.”

Kansas:

“§ 78-1501a

“(Par. 3) Tax to equal 80 per centum of federal estate tax.—In the event that the total of the inheritance taxes imposed upon the several interests and property comprising the estate of the deceased, by chapter 79, article 15, Revised Statutes of Kansas 1923, and any amendments thereof, shall not equal 80 per centum of the amount of the tax imposed upon the value of the net estate of said decedent under title 3 of the act of congress approved February 26, 1926, entitled ‘An act to reduce and equalize taxation, to provide revenue, and for other purposes,’ and cited as the revenue act of 1926, whenever the federal estate

tax is determined an additional tax shall then be imposed upon the value of the net estate of said decedent as of the date of such determination equal to the difference between the total of the tax imposed under chapter 79, article 15, Revised Statutes of Kansas, 1923, and any amendments thereof, and 80 per centum of the tax imposed by title 3 of the said act of congress. (L. 1930, ch. 15 § 1; March 11.)”

Kentucky:

“§ 4281a-28

“(Par. 24) Estate tax levied.—In addition to the inheritance tax hereinbefore imposed, an estate tax is hereby levied on all estates equal to the amount by which the credits for state death taxes allowable under the Federal estate tax law exceeds the tax levied under Sections 1 and 2 of this Act. Said tax shall be payable at the same time and in the same manner as the inheritance taxes levied by this Act.

* * * * *

“§ 4281a-29

“(Par. 26) Purpose of estate tax.—The intent and purpose of this section is to take full advantage of the credit allowed for state succession duties by Federal estate tax law by imposing an additional tax, and the same shall be liberally construed to effect this purpose. (1929, 3rd ex. x., c. 8, §3 (3). Eff. April 24, 1936.)”

Maine:

“Estate Taxes.

§ 36

“(Par. 47) Estate taxes, how imposed.—There shall be assessed by the commissioner, in addition to the inheritance tax hereinbefore provided, an estate tax upon all estates which are subject to taxation under the federal revenue act of 1926 as heretofore amended. Said tax is hereby imposed upon the transfer of the estate of every person, who at the time of his death was a resident of this

state. The amount of said tax shall be the amount by which 80% of the estate tax payable to the United States under the provisions of said federal revenue act shall exceed the aggregate amount of all estate, inheritance, legacy, and succession taxes actually paid to the several states of the United States in respect to any property owned by such decedent, or subject to such taxes as a part of or in connection with his estate.

“(Par. 48) Said tax is hereby imposed also upon the transfer of all real property or tangible personal property situate within the state and passing by reason of the death of a person who was not a resident of this state at the time of his death. The amount of said tax shall be the amount by which 80% of the estate tax payable to the United States by reason of the transfer of such property exceeds the aggregate of the taxes payable thereon under the provisions of sections 3, 4, and 5 of this act.

* * * * *

“§ 38

“(Par. 50) Intent of §§36-40, inclusive.—The intent and purpose of sections 36 to 40, inclusive, imposing an estate tax is to obtain for this state the benefit of the credit allowed under the provisions of Title III, section 301, sub-section (b) of the federal revenue act of 1926 to the extent that this state may be entitled by the provisions of sections 36 to 40, inclusive, by imposing an additional tax, and the same shall be liberally construed to effect this purpose. The commissioner may make such regulations relative to the assessment and the collection of the tax provided by said sections, not inconsistent with law, as may be necessary to carry out this intent.”

Maryland:

“§ 2

“(Par. 51) Tax imposed.—In addition to the tax and/or taxes imposed by Article 81, a ‘Mary-

land Estate Tax' is hereby imposed upon the transfer of the 'Maryland Estate' of every 'Decedent,' the amount of which 'Maryland Estate Tax' shall be equal to the extent, if any, of the excess of the 'Credit' over the aggregate of 'State Taxes,' payable by or out of the 'Maryland Estate' of the 'Decedent' or any part thereof, provided, however, that such 'Maryland Estate Tax,' hereby imposed shall in no case exceed the extent to which its payment will effect a saving or diminution in the amount of the 'Federal Estate Tax,' payable by or out of the 'Estate' of the 'Decedent' had this Article not been enacted. (1929, ch. 275, sec. 2.)."

Minnesota:

"§2321-1

"(Par. 99-E) Inheritance tax.—There shall be assessed by the probate court in addition to the inheritance tax as now provided by Mason's Minnesota Statutes of 1927, Sections 2292-2321, an estate tax upon all estates which are subject to taxation under the present Federal Revenue Act of Nineteen Hundred Twenty-six. Said tax is hereby imposed upon the transfer of the estate of every person, who at the time of his death was a resident of this state. The amount of said tax shall be computed by the attorney general and his computation shall be sent to the probate court of the county of deceased's residence and shall be by the probate court assessed as an additional amount of inheritance tax as fixed in accordance with the provisions of this act by said probate court. In the event that the estate of the deceased is not probated, said tax shall be determined and computed by the attorney general. The amount of said tax so assessed shall be the amount by which eighty per cent of the estate tax, payable to the United States under the provisions of the said Federal Revenue Act of Nineteen Hundred Twenty-six (Mason's U. S. Code, Anno.,

title 26 §§1136-1 to 1136-49), shall exceed the aggregate amount of all estate, inheritance, legacy and succession taxes actually paid to the several states of the United States in respect to any property owned by such decedent, or subject to such taxes as a part of or in connection with his estate. (Act Apr. 24, 1931, c. 332, §1.)

* * * * *

“§2321-4

“(Par. 99-H) Intent of act.—It is hereby declared to be the intent and purpose of this act to obtain for this state the benefit of the credit allowed under the provisions of said Title III, Section 301, subsection (b) of the Federal Revenue Act of Nineteen Hundred Twenty-six (Mason’s U. S. Code, Anno., title 26, § 1136-3 (b)) to the extent that this state may be entitled by the provisions of this act, by imposing additional taxes, and the same shall be liberally construed to effect this purpose. The attorney general may make such regulations, relative to the assessment and the collection of the tax provided by this act, not inconsistent with law, as may be necessary to carry out this intent. (Act Apr. 24, 1931, c. 332, §4.)”

Montana:

“(Par. 20) (a) Estate tax.—In addition to the taxes hereinabove imposed, an estate tax is hereby imposed upon the transfer of all estates which are subject to an estate tax under the provisions of the United States Revenue Act of 1926, and amendments thereto, where the decedent, at the time of his decease, was a resident of this state. The amount of said estate tax shall be equal to the extent, if any, of the excess of the credit of not exceeding eighty per cent (80%), allowable under said United States Revenue Act, over the aggregate amount of all estates, inheritance, transfer, legacy and succession taxes paid to any state or territory or the District of Columbia, in respect to any property in the estate of said decedent.

Provided, that such estate tax hereby imposed shall in no case exceed the extent to which its payment will effect a saving or diminution in the amount of the United States Estate Tax payable by, or out of the estate of the decedent, had subdivisions (a) to (h) not been enacted. The tax imposed herein shall be collected by the several county treasurers or the State Treasurer and distributed as hereinafter provided.

* * * * *

“(Par. 26) (g) Intent of subdivisions (a) to (h).—It is hereby declared to be the intent and purpose of subdivisions (a) to (h) to obtain for this state the benefit of the credit allowed under the provisions of said United States Revenue Act, to the extent that this state may be entitled by the provisions of said Act, by imposing additional taxes and the same shall be liberally construed to effect this purpose.”

Nebraska:

“ARTICLE 23

ESTATE TAX UPON TRANSFER FROM RESIDENT
DECEDENTS

§ 77-2301

“(Par. 21) Estate or Excise Tax, Administration, Proceeds.—In addition to the inheritance taxes imposed by the laws of the State of Nebraska, there is hereby levied and imposed an estate or excise tax upon the transfer at death of the estate of every resident decedent, the amount of which shall be the amount by which eighty per cent of the estate tax payable to the United States Government under the provisions of the Federal Revenue Act of 1926 and amendments thereto shall exceed the aggregate amount of all estate, inheritance, legacy and succession taxes actually paid to the several states of the United States and subdivisions thereof in respect to any property

owned by such decedent or subject to such taxes as a part of or in connection with his estate. (1929 p. 254.)

* * * * *

“77-2307

“(Par. 27) Same, Construction and Purpose.—This act is not a commitment of the Legislature to the principle of the coercive features of the Federal Estate Tax. It is accepted in order to protect the temporary interests of the people of the State of Nebraska. (1929 p. 255.)”

New Hampshire:

CHAPTER 72-A

(Laws 1931, Chap. 125, effective April 28, 1931.)

Taxation of Transfer of Certain Estates

1

“(Par. 75) Tax imposed.—In addition to the taxes imposed by chapter 72 of the Public Laws an estate tax is hereby imposed upon the transfer of all estates which are subject to an estate tax under the provisions of the United States revenue act of 1926, and amendments thereto, where the decedent at the time of his decease was a resident of this state. The amount of said New Hampshire estate tax shall be equal to the extent, if any, of the excess of the credit of not exceeding eighty per cent, allowable under said United States revenue act, over the aggregate amount of all estate, inheritance, transfer, legacy and succession taxes paid to any state or territory or the District of Columbia, in respect to any property in the estate of said decedent. Provided that such estate tax hereby imposed shall in no case exceed the extent to which its payment will effect a saving or diminution in the amount of the United States estate tax payable by or out of the estate of the decedent had this act not been enacted. The tax imposed by this act shall be for the use of the state.

* * * * *

“7

“(Par. 80) Intent of Act.—It is hereby declared to be the intent and purpose of this act to obtain for this state the benefit of the credit allowed under the provisions of said United States revenue act, to the extent that this state may be entitled by the provisions of said act, by imposing additional taxes and the same shall be liberally construed to effect this purpose.”

New Jersey:

“PART 2. ESTATE TAX

CHAPTER 38. IMPOSITION AND COLLECTION OF TAX
§54:38-1

“(Par. 89) Imposition of tax; amount.—In addition to the inheritance, succession or legacy taxes imposed by this state under authority of chapters 33 to 36 of this title (§54:33-1 *et seq.*), or hereafter imposed under authority of any subsequent enactment, there is hereby imposed an estate or transfer tax upon the transfer of the estate of every resident decedent which is subject to an estate tax payable to the United States under the provisions of the federal revenue act of one thousand nine hundred and twenty-six and the amendments thereof and supplements thereto or any other federal revenue act in effect as of the date of death of the decedent, the amount of which tax shall be the sum by which the maximum credit allowable against any federal estate tax payable to the United States under any federal revenue act on account of taxes paid to any state or territory of the United States or the District of Columbia, shall exceed the aggregate amount of all estate, inheritance, succession or legacy taxes actually paid to any state or territory of the United States or the District of Columbia, including inheritance, succession or legacy taxes actually paid this state, in respect to any property owned by such decedent or subject to such taxes as a part of or in connection with his estate.

* * * *

“§54:38-13

“(Par. 99-D) Purpose of chapter; liberal construction.—It is the intent and purpose of this chapter to obtain for this state the benefit of the credit allowed under the provisions of section three hundred and one, subsection ‘b’ of the federal revenue act of one thousand nine hundred and twenty-six, the amendments thereof and supplements thereto and any subsequent modifications thereof. The provisions of this chapter shall be interpreted and construed liberally in order to accomplish the purpose thereof and the state tax commissioner shall have, in addition to his other powers and those in this chapter specified, all additional, implied and incidental powers which shall be proper and necessary to effect and carry out the expressed intent and purpose of this chapter. (L. 1934, c. 243, §13, p. 696.)”

Oklahoma:

“§3

“(Par. 3) Supplemental estate tax to take advantage of the Federal credit.—In case the tax imposed upon the net estate and transfers by this Act does not equal eighty (80%) per cent of the amount of the tax imposed upon the value of the net estate and transfers of the decedent under Title III, Estate Tax of the Federal ‘Revenue Act of 1926,’ approved February 26, 1926, and all amendments thereto, or does not equal any other credit allowed by the Federal Government on estate tax imposed upon the net estate, then, and in that event, there is hereby levied an additional tax which shall be and is hereby imposed upon the value of the net estate, as of the date of the determination of such Federal Estate Tax, equal to the difference between the total of the estate and transfer tax imposed by Section 2 of this Act and eighty (80%) per cent of the tax imposed by the Federal Estate Tax Act, as amended, above referred to, or any other credit allowed

by any other Act of Congress as against any estate or transfer tax imposed by said Act of Congress and all amendments thereof or thereto. Such additional tax to absorb said credit shall equal the difference between the basic Oklahoma estate transfer tax and such proportion of the eighty (80%) per cent Federal credit as the value of the property of the estate taxable in Oklahoma bears to the total value of decedent's estate, and shall be determined, assessed, collected and paid under this Act."

Rhode Island:

"§32

"(Par. 54) Taxes in addition to those imposed by §§1 and 4.—In addition to the taxes imposed by section one and section four of this chapter a tax shall be and is hereby imposed upon the transfer of the net estate of every decedent, ascertained as aforesaid, equal to the sum of the following percentages. * * *

"§34

"(Par. 57) Refund of taxes in excess of credit allowed under federal revenue act of 1926.—Whenever the taxes imposed by section one, section four and section thirty-two of this chapter shall exceed the amount allowed as a credit under the provisions of section three hundred one, sub-section (b) of the federal revenue act of 1926, apportioned to this state as hereinafter provided, then the general treasurer shall, upon the certification of the tax administrator and with the approval of the controller, but only to the extent of the amount of tax imposed by section thirty-two of this chapter, refund, without interest, such excess to the person by whom the tax imposed by said section thirty-two was paid.

"(Par. 58) Intent of statute.—It is hereby declared to be the intent and purpose of this chapter to obtain for this state the benefit of the

credit allowed under the provisions of said section three hundred one, sub-section (b) of the federal revenue act of 1926, to the extent that this state may be entitled by the provisions of this chapter, by imposing the additional tax provided in section thirty-two of this chapter. (P. L., 1929, Chap. 1355, amending P. L., 1926, Chap. 810; as amended by L. 1939, c. (H. B. 858).)"

South Carolina:

LAWS 1936, ACT. No. (S. B. 1376), Approved and Effective June 5, 1936.

§1

"(Par. 44) Estate tax imposed in resident and nonresident estates.—A tax in addition to the inheritance tax imposed by existing law is hereby imposed upon the transfer of the net estate of every decedent dying after the enactment of this Act, whether a resident or non-resident of the State, where the inheritance tax imposed by existing law is in the aggregate of a lesser amount than the maximum credit of eighty per cent. of the Federal estate tax allowed by the Federal Estate Tax Act as contained in the Federal Revenue Act of 1926, because of said tax herein imposed, then the inheritance tax provided for by law shall be increased by an estate tax on the net estate so that the aggregate amount of tax due this State shall be the maximum amount of credit allowed under said Federal Estate Tax Act; said additional tax shall be paid out of the same funds as any other tax against the estate."

Tennessee:

"§ 1297

"(Par. 89.) Tax imposed.—In addition to any inheritance, succession and/or estate tax or taxes imposed by the State of Tennessee under the authority of any other statute or statutes, a Tennessee estate tax is imposed for the exclusive use of the state upon the transfer of the Tennessee

estate of every decedent, the amount of which Tennessee estate tax shall be equal to the extent, if any, of the excess of the credit over the aggregate of state taxes, payable by or out of the Tennessee estate of the decedent, or any part thereof, provided, however, that such Tennessee estate tax imposed shall in no case exceed the extent to which its payment will affect a saving or diminution in the amount of the Federal estate tax, payable by or out of the estate of the decedent had this statute not been enacted. (Ib., sec. 2.)”

Texas:

“ADDITIONAL INHERITANCE TAX (ESTATE TAX) AND PROVISIONS STRENGTHENING INHERITANCE TAX Laws 1933, Chap. . . (S. B. 412), Section 2b, approved May 31, 1933, effective August 31, 1933

§ 1

“(Par. 34) Additional inheritance tax.—In addition to the inheritance tax already levied by this State under existing laws, an inheritance and transfer tax is hereby levied upon the net estate of every decedent dying after this Act shall take effect, and whose estate, or any portion thereof, is, or hereafter shall be, made taxable under the inheritance tax laws of this State, or that may be subject to such taxes under any law of this State that may be hereafter enacted. Said tax shall be, and is, levied upon the entire net value of the taxable estate of the decedent situated and taxable in the State of Texas, and the tax on each such estate shall be equal to the difference between the sum of such taxes due this State as inheritance or transfer taxes and eighty (80) per cent of the total sum of the estate and transfer taxes imposed on such estate by the United States Government under the Revenue Act of 1926, by reason of the property of such estate which is situated in this State and taxable under the laws of this State.

* * * * *

“§ 3

“(Par. 36) Purpose of additional tax.—In the event the amount of inheritance and transfer taxes assessed against any certain estate under the inheritance tax laws of this State shall equal or exceed eighty (80) per cent of the estate or transfer taxes assessed and computed by the United States under the Revenue Act of 1926, against said estate or property belonging thereto and situated within the State of Texas then no additional taxes shall be collected hereunder, it being the purpose and intention of this Act to collect only a sufficient additional tax, when necessary, for the State to get the full benefit of the eighty (80) per cent credit to the States provided for by Section 301, Chapter 27 of the Federal Revenue Act of 1926.”

Vermont:

“Additional Estate Tax

§1116

“(Par. 70) Assessment; rate.—There is hereby assessed in addition to the taxes assessed under the provisions of this chapter, an estate tax upon all estates which are subject to an estate tax under the provisions of the United States revenue act of 1926 where the decedent at the time of his decease was a resident of this state. The amount of said tax shall be the amount by which eighty per cent of the estate tax is imposed by the United States government under the provisions of such revenue act and exceeds the aggregate amount of all estate, inheritance, legacy, transfer and succession taxes actually paid to the several states of the United States or the District of Columbia, in respect to any property in the estate of the decedent. (1927, No. 23, §1.)

* * * * *

“§1121

“(Par. 75) Construction; regulations.—It is hereby declared to be the intent and purpose of this and of the five preceding sections to obtain for this

state the benefit of the credit allowed under the provisions of said Title III, section 301, sub-section (b) of the United States revenue act of 1926, to the extent that this state may be entitled by the provisions of such revenue act by imposing additional taxes, and the same shall be liberally construed to effect this purpose. The commissioner may make such regulations relative to the assessment and the collection of the tax provided herein, not inconsistent with law, as may be necessary to carry out this intent. (1927, No. 23, §6.)”

Virginia:

“(Par. 43) This section shall always be so construed as not to increase the total amount of inheritance taxes, State and federal, payable upon the estates of decedents, the only object of this section being to take full advantage of the credit allowed by the act of congress hereinabove mentioned; and if the said act of congress should be in any manner affected by subsequent legislation of congress, this section shall be so construed as to take full advantage of such credit as the laws of the United States may allow. (1926, p. 826, §44 $\frac{1}{4}$.)”

West Virginia:

§28

“(Par. 56) Estate tax imposed.—It is the purpose of this section to impose an estate tax and to take full advantage of the credit allowed by laws of the United States because of transfer or death taxes actually paid to this state. There is, therefore, imposed hereby a tax in addition to any inheritance tax under the laws of this state upon the net estate of every decedent, whether resident or non-resident, dying after the enactment of this act. In the case of non-residents, the tax shall be on only so much of the net estates as represents property or funds having a taxable situs in this state.

“The amount of the tax shall be computed by determining the full amount of the federal tax due upon a transfer in accordance with laws of con-

gress in force at the time of the death of the decedent, and by calculating that percentage of the federal tax allowed as credit because of the payment of this tax to the state. The rules and regulations for determining the amount of the net estate upon the transfer of which the tax is imposed, shall be the same as the rules and regulations adopted by the commissioner of internal revenue for determining the net estate under laws of congress.

“The administrative provisions of this article relating to the collection of the state inheritance tax shall apply, so far as applicable, to the collection of the tax imposed by this section. (Added by L. 1933, Ex. Sess., c. 36, effective from June 3, 1933.)”

Wisconsin:

“§72.50

“(Par. 77) Tax imposed.—In addition to the taxes imposed by sections 72.01 to 72.26, an estate tax is hereby imposed upon the transfer of all estates which are subject to an estate tax under the provisions of the United States revenue act of 1926, and amendments thereto, where the decedent at the time of his decease was a resident of this state. The amount of said estate tax shall be equal to the extent, if any, of the excess of the credit of not exceeding eighty per cent, allowable under said United States revenue act, over the aggregate amount of all estates, inheritance, transfer, legacy and succession taxes paid to any state or territory or the District of Columbia, in respect to any property in the estate of said decedent. Provided, that such estate tax hereby imposed shall in no case exceed the extent to which its payment will effect a saving or diminution in the amount of the United States estate tax payable by or out of the estate of the decedent had sections 72.50 to 72.61 not been enacted. The tax imposed therein shall be collected by the several county treasurers for the use of the state, and

shall be accounted for and paid into the state treasury within the time and in the manner specified in section 72.19. (1931, c. 426.)

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“§72.56

“(Par. 83) Intent of sections 72.50 to 72.61.— It is hereby declared to be the intent and purpose of sections 72.50 to 72.61 to obtain for this state the benefit of the credit allowed under the provisions of said United States revenue act, to the extent that this state may be entitled by the provisions of said act, by imposing additional taxes and the same shall be liberally construed to effect this purpose. (1931, c. 426.)”